

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1906.

No. 1645.

LEWIS L. WATSON, APPELLANT,

vs.

HOWARD M. CARVER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

No. 1645.

LEWIS L. WATSON, Appellant,
vs.
HOWARD M. CARVER.

a Supreme Court of the District of Columbia

Equity. No. 24742.

LEWIS L. WATSON, Complainant,
vs.
HOWARD M. CARVER, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill.*

Filed May 25, 1905.

In the Supreme Court of the District of Columbia.

Equity No. 24742, Docket No. 55.

LEWIS L. WATSON, Complainant,
vs.
HOWARD M. CARVER, Defendant.

To the Honorable Justice of the Supreme Court of the District of Columbia, holding an Equity Court:

Complainant states as follows:

1. That he is a citizen of the United States, a resident of the District of Columbia and he files this bill in his own right being the owner in fee simple of lot numbered thirty-three (33) of M. P. Caldwell's subdivision of part of square numbered eight hundred and eighty-two (882), and entitled to the free and uninterrupted use of the alley hereinafter referred to.

2. That the defendant is a citizen of the United States, a resident of the District of Columbia and is sued in his own right, being the owner in fee simple of lot thirty-two of M. P. Caldwell's subdivision of part of square numbered eight hundred and eighty-two (882) and who without legal or equitable right or authority maintains an obstruction in the alley adjoining the rear of said lots thirty-two and thirty-three thereby inequitably and illegally preventing the free and lawful use of said alley by complainant.

3. That heretofore to wit: on the seventh day of May A. D. 1897, M. P. Caldwell being the owner in fee of original lot numbered fourteen in square numbered eight hundred and eighty-two, donated to the District of Columbia the rear five feet by the width thereof of original lot fourteen in square eight hundred and eighty-two for an alley and had prepared a subdivision thereof wherein said original lot fourteen was subdivided into three lots viz: thirty-two (32), thirty-three (33) and thirty-four (34), the subdivision being known as M. P. Caldwell's subdivision of square numbered eight hundred and eighty-two (882) and recorded in Book 22, page 109 of the records of the Surveyor's Office of the District of Columbia, a certified copy of said subdivision is hereto attached and made a part of this bill being Exhibit No. 1 and complainant prays that the same may be read at the hearing, that the said subdivision shows an alley five feet wide at the rear of said lots 32, 33 and 34 having an outlet on Canal Street Southeast; that the District of Columbia by its Commissioners accepted said five feet by the width of original lot 14, donated as aforesaid, in square 882 as an alley, approved M. P. Caldwell's subdivision of said original lot 14 in said square 882 and directed the Surveyor for the District of Columbia to enter the same of record and the same is recorded in Book 22, page 109 of the records of the Surveyor's Office for the District of Columbia as aforesaid, that this act first on the part of M. P.

3 Caldwell and second on the part of the Commissioners for the District of Columbia was a dedication of said alley for public use, the certificate of said subdivision is on file in the Surveyor's Office of the District of Columbia and an office copy of the same being Exhibit No. 2 is hereto attached and made a part hereof and complainant prays that the same may be read at the hearing.

4. That subsequently said M. P. Caldwell conveyed lots 32, 33 and 34 in square 882 by deed in fee simple to Eugene A. Atchison, that the deed delivered to said Atchison did not embrace that piece or parcel of land shown by said subdivision to be set apart for an alley but was delivered subject to the rights, ways, easements and privileges of said alley, that said Atchison erected a house on each of said lots but by mistake the carpenters employed by said Atchison erected the frame sheds on that part of the land heretofore donated and set apart by said M. P. Caldwell and accepted by the District of Columbia as an alley and the title in fee simple, had, by virtue of its dedication theretofore made by M. P. Caldwell, become vested in the District of Columbia, that said Eugene A. Atchison offered to remove the frame shed on lot 32 that had by inadvertence been erected

on the wrong spot by his carpenters as aforesaid to its proper line but was not permitted to do so, the deed from said Caldwell to said Atchison is recorded in Liber No. 2243 at folio 491 *et seq.* an office copy of which being exhibit No. 3 is hereto attached and made part hereof, and complainant prays that the same may be read at the hearing, that complainant's deed recorded in Liber No. 2466, folio 287, *et seq.*,

an office copy Exhibit No. 4 is hereto attached and made a part hereof and complainant prays that the same may be read at the hearing, that complainant has a right to the free and uninterrupted use of that part of said alley adjoining the rear of said lot 32 in said square 882, but the defendant without reason, justification or legal or equitable right maintains an obstruction in the said alley at the rear of his said lot 32 in said square 882 and by reason of said obstruction complainant is prevented and prohibited from using said alley and serious damage and loss has thereby resulted to complainant.

5. That on the 7th day of April 1903, the Commissioners of the District of Columbia confirmed their acceptance of the 5 foot alley in square 882, created by subdivision of original lot 14 in square 882 into lots 32, 33 and 34 and alley, made by M. P. Caldwell and recorded as aforesaid and theretofore approved and accepted by said Commissioners in 1897 and ordered all obstructions in said alley to be removed, a copy of said order being Exhibit No. 5 is hereto attached and complainant prays that the same may be read at the hearing, that subsequently on or about the 13th day of April A. D. 1903, the Commissioners of the District of Columbia requested complainant in writing to move his frame shed and fence obstructing the alley to the proper line within ten days thereafter, that complainant complied with the request of the Commissioners of the District of Columbia and moved his frame shed and fence from the alley, said request being Exhibit No. 6 is hereto attached and made a part hereof and complainant prays that the same may be read at the

hearing, complainant has been informed that a like request was sent to Mr. Wm. L. Foulke the owner of lot 34 in said square who complied with their request and moved his frame shed and fence from the alley and complainant has also been informed that a like request was sent to defendant by the Commissioners of the District of Columbia, but defendant refused to comply with the request of the Commissioners of the District of Columbia and defendant was, thereafter brought before the police court and it was held to be a private alley, a letter to complainant being Exhibit No. 7 is hereto attached and made a part hereof and complainant prays that the same may be read at the hearing.

6. That said lot 32 in said square 882 has a frontage of seventeen feet and a depth of sixty-six feet to said five foot alley shown on said subdivision in the Surveyor's Office as aforesaid, that said lot 32 contains one thousand one hundred and twenty-two square feet of ground, that no part of the alley 5 feet by 49 feet running by and adjoining the rear of said lots 32, 33 and 34 forms any part of the area of said lots, but the exclusive ownership of the fee in said alley is vested in the District of Columbia by dedication as aforesaid and

was so vested prior to the conveyance of said lot 32 to defendant by said Eugene A. Atchison as aforesaid and defendant holds his deed to said lot 32 subject to the rights, ways, easements and privileges of complainant to use said alley for the benefit of complainant's said lot 33, that defendant's deed is recorded in Liber No. 2298, folio 397 *et seq* being Exhibit No. 8, and office copy is hereto attached and made a part hereof, and complainant prays that it may be

6 read at the hearing, that defendant has no right legal or equitable to have and maintain obstructions (frame shed and fence) in said alley that prevent or prohibit the free and uninterrupted use of said alley by complainant and prevent complainant's egress from the rear of his said lot 33 to Canal Street Southeast, that the right in defendant to maintain obstructions in said alley is not now vested in defendant and never has vested in defendant and defendant's maintenance and continuance of obstructions in said alley by defendant's frame shed and fence thereby preventing the free and uninterrupted use of said alley by complainant, is arbitrary, unlawful and without legal or equitable right, that the said obstructions maintained by defendant in said alley has produced serious damage and loss to complainant by preventing complainant from having an outlet from the rear of complainant's said lot 33 in said square 882 as in justice and equity complainant should have, that at present the only outlet from the rear of complainant's said lot 33, is through the front door of complainant's house heretofore erected on said lot 33, that if defendant is permitted to continue the present obstructions on said alley irreparable damage and financial loss and inconvenience will result to complainant's real estate, in that the value of complainant's real estate being lot 33 in square 882, will be greatly depreciated in value by reason of having no egress from the rear of complainant's said lot 33 as in justice and equity complainant should have as shown by the public records, that it is inequitable and unjust to allow defendant to appropriate exclusively for defendant's own use that piece or parcel of land owned by the District of Columbia and lawfully set apart
7 as an alley for the benefit of the owners of lots 32, 33 and 34 in square 882, for which wrong complainant has no remedy except by the interposition of this Honorable Court.

Complainant therefore prays:

1. That this Honorable Court may by decree grant an injunction either permanently and perpetually enjoining and prohibiting defendant from obstructing any part of said alley at the rear of said lots 32, 33 and 34 in square 882, or command defendant to move all obstructions now in said alley at the rear of his said lot 32 to the proper line within a time to be fixed by this Honorable Court.

2. That the United States writ of subpoena may issue out of this Honorable Court commanding said Howard M. Carver to appear and answer the exigency of this bill the oath to the answer is hereby expressly waived.

3. That complainant may have such other and further relief as the nature of the case may require.

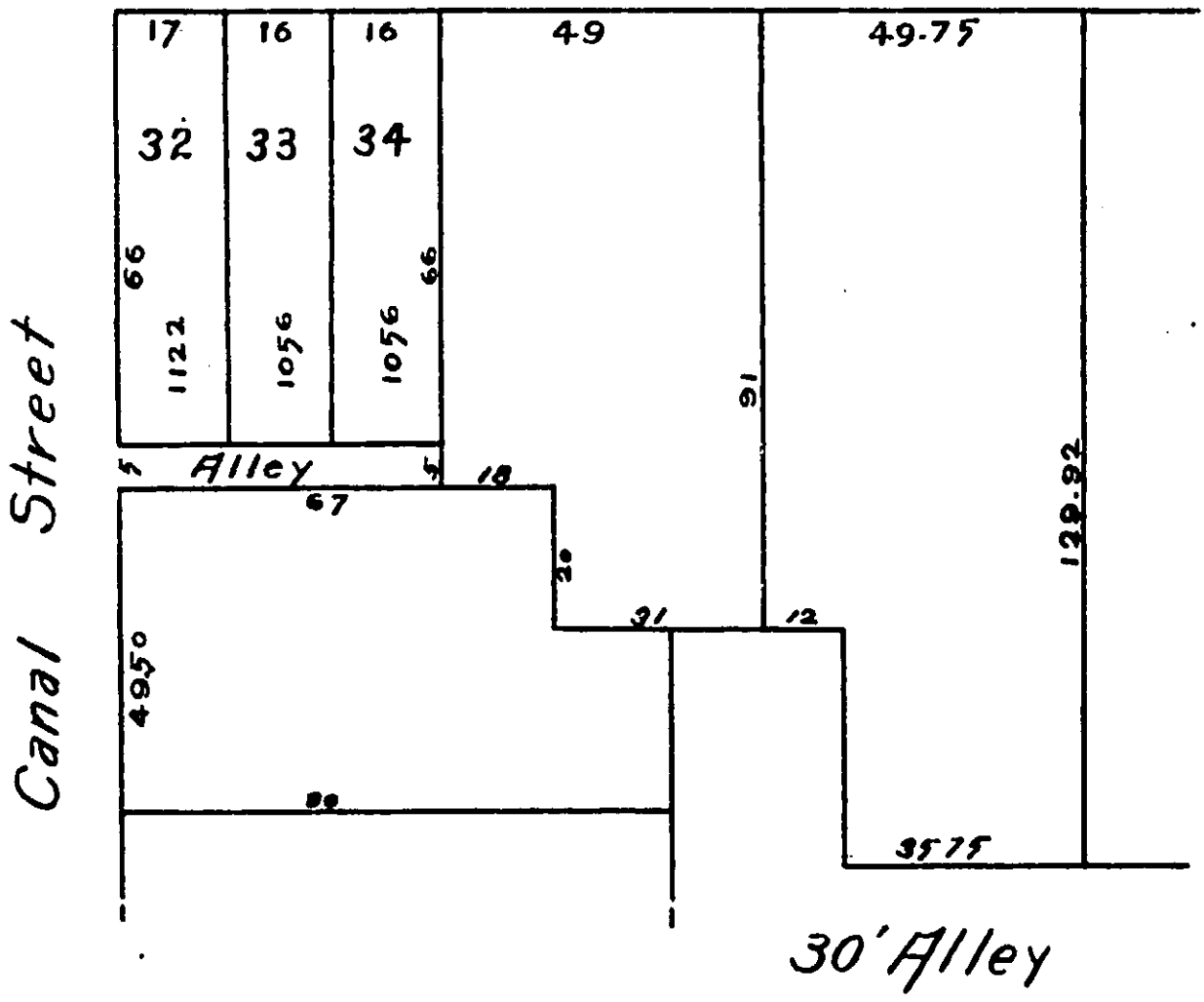
LEWIS L. WATSON.

JOS. H. STEWART.

COMPLAINANT'S EXHIBIT NO.1

8 8 2

L Street south



NOTE:- For order of Commissioners, D. C. dated April 7th, 1903 confirming acceptance of 5 ft. alley in this subdivision see subdivision files of Surveyor's Office, D.C. (signed) H. B. LOOKER Surveyor, D. C.

July 21st, 1903. E. D. 21890/12

Washington, D. C.,
July 7th, 1897.

I hereby subdivide original lot 14, Square 882, into lots 32, 33 and 34 and alley 5 feet wide as shown above.

(signed) M. P. CALDWELL (SEAL)

(signed) CHAS. E. VAN ARSDALE

Witness

(signed) GEO. H. O'CONNOR

ORDERED:-

The Surveyor of the District of Columbia will admit this plat of subdivision to record in his office, under Act of Congress approved August 27th, 1888.

(signed) JOHN W. ROSS
(signed) JOHN B. WIGHT
(signed) W. M. BLACK

Date....July.6.1897

Commissioners of the District of Columbia

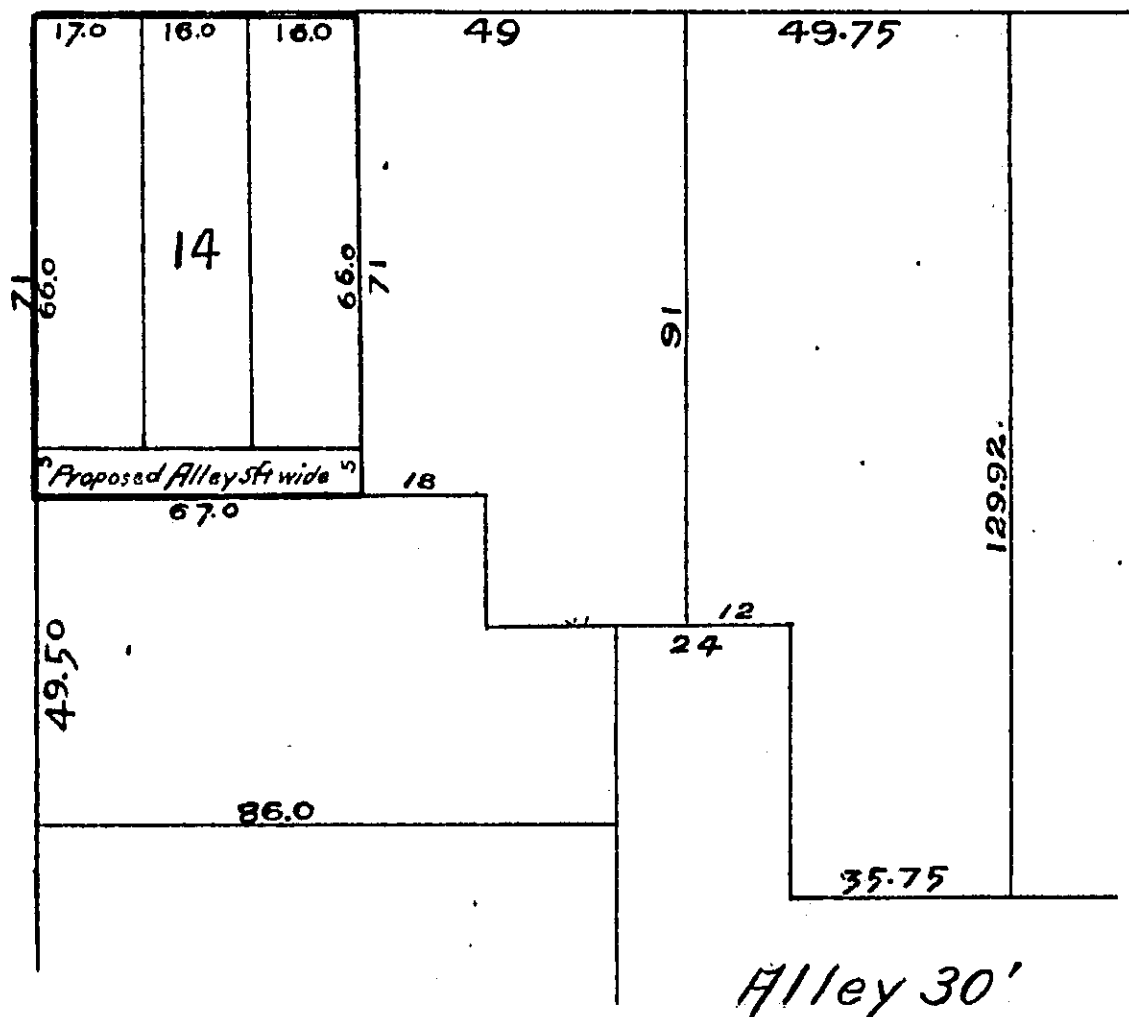
Canal Street

COMPLAINANT'S EXHIBIT NO. 2.

Washington D. C. May 22' 1897

8 8 2

South "L" Street



I do solemnly swear that I have read the bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

LEWIS L. WATSON.

8 Subscribed and sworn to before me this 21st day of June
A. D. 1904.

[NOTARIAL SEAL]

S. E. LACY,
Notary Public.

(Here follows diagram marked p. 9.)

10 I certify that the foregoing plat is correct and agrees with
the records of this office.

Witness my hand and official seal, this July 7th, 1897.

(Signed)

WM. FORSYTH, [SEAL.]
Surveyor, District of Columbia.

I certify that the foregoing is a true copy of page 109, Book 22,
in the Surveyor's Office, D. C.

WM. P. RICHARDS,
Surveyor, District of Columbia, May 3rd, 1905.

(Here follows diagram marked p. 11.)

12 I hereby subdivide original lot 14, Square 882, into lots
and 5 ft. alley, in red as shown above, subject to approval by
the Commissioners, D. C., and record in the District Surveyor's
Office.

(Signed)

M. P. CALDWELL. [SEAL.]

Witness

(Signed)

JAS. H. FORSYTH.

(Signed)

CHARLES P. CALVERT.

I certify that the foregoing plat is correct according to the records
of this office, and that the subdivision does not affect existing alleys.

(Signed)

WM. FORSYTH,
Surveyor, District of Columbia.

Fee pd.

I certify that the foregoing is a true copy of the original on file
in the Surveyor's Office, D. C.

WM. P. RICHARDS,
Surveyor, District of Columbia.

May 3rd, 1905.

(Endorsed:) 882 No. 19, E. D. 227930 Co. 1897 No. — 1897 No. 4914 Engineer Dept., Vol. — 189— 22-109 Washington, D. C. May 22 1897 Caldwell, M. P. Sudivision of lot 14. Sq. #882 Enclosures. No. — Engineer Dept., Vol. 189 District of Columbia, County of Washington to-wit: Personally appeared before me (signed) Jas. H. Forsyth a Notary Public in and for the District of Columbia M. P. Caldwell who being duly
 13 sworn deposes and says that he is the owner in fee simple of original lot 14, Square 882 (subject to a trust) the property proposed to be subdivided as per plat herewith; that no other person or persons than the undersigned have any interest or claim therein; that he is in a peaceful occupation thereof; and that there no suits or actions pending affecting the title to said property. (Signed) M. P. Caldwell Subscribed and sworn to before me this 22nd day of May 1897 (Signed) Jas H. Forsyth Notary Public. No. — Engineer Dept. Vol. 189 July 6 1897 Respectfully Forwarded to Engineer Commissioner, D. C. All Taxes Paid to June 30, 1897. No unpaid special assessments to date. (Signed) A. Y. Lakeman Chief Clerk, E. D. July 6, 1897. Respectfully forwarded to the Engineer Commissioner, D. C. Recommended for approval. (Signed) Edw. Burr Captain Engineers, U. S. A. Approved (Signed) Lansing H. Beach Captain, Engineers, U. S. A. Respectfully referred to the Surveyor D. C. by order (signed) W. Tindall sec'ty. July 7/97.

14

COMPLAINANT'S EXHIBIT No. 3."

Liber 2243, Folio 491 et seq.

Milton P. Caldwell *et ux.* to Eugene A. Atchison.

Recorded November 10, 1897. 3:44 P. M. Deed.

This indenture, made this Sixth day of November in the year of our Lord one thousand eight hundred and ninety-seven, by and between Milton P. Caldwell, and Elizabeth F. Caldwell, (his wife) of the City of Washington Dist. of Columbia of the first part, and Eugene A. Atchison, of the same place, party of the second part. Witnesseth, that the said parties of the first part, for and in consideration of the sum of Ten Dollars, in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, released and conveyed, and do by these presents, grant, bargain, and sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns, forever, the following described real estate, situate in the City of Washington, District of Columbia, to wit: (All of those certain pieces or parcels of land and premises known and distinguished as and being: Lots Thirty-two (32), Thirty-three (33) and Thirty-four (34) of M. P. Caldwell's Subdivision or original Lot Fourteen (14) Square Eight

Hundred and Eighty-two (882), as per plat of record in the Office of the Surveyor of the District of Columbia, in Liber 22
 15 folio 109. Subject to a trust of Five Hundred (\$500) dollars, dated September twentieth (20th) 1897, recorded Liber 2252, page 166 to secure the Eastern Building and Loan Association. Also a Second trust dated June 8, 1897, recorded Liber 2267, Page 12, for two hundred and Eighty (\$280) dollars to secure E. C. De Sander for that amount and the party of the second part, hereby assumes and agrees to pay each of these trusts. Together, with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said parties of the first part, of, in, to, or out of the said pieces or parcels of land and premises. To have and to hold, The said pieces or parcels of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns to his & their sole use, benefit, and behoof forever. And the said Milton P. Caldwell, and wife, for themselves and for their heirs, executors, and administrators, do hereby covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that they the said parties of the first part, and their heirs, shall and will warrant and forever defend the said pieces or parcels of land and premises and appurtenances, unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under or through them. And the said parties of
 16 the first part, further covenant, promise and agree to and with the said party of the second part, that they the said parties of the first part, and their heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make, execute, deliver, and acknowledge all such other Deed or Deeds or other assurance in law, for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or their counsel learned in law, shall advise, devise or require. In testimony whereof, the said parties of the first part, have hereunto set their hands and seals, on the day and year first hereinbefore written.

MILTON P. CALDWELL. [SEAL.]
 ELIZABETH F. CALDWELL. [SEAL.]

Signed, Sealed and Delivered in the presence of—
 ROLAND C. BOOTH.

DISTRICT OF COLUMBIA, *to wit*:

I, Roland C. Booth, a Notary Public, in and for the District of Columbia, Do Hereby Certify, That Milton P. Caldwell, and Elizabeth F. Caldwell, his wife, parties to a certain Deed, bearing date on the Sixth day of November, A. D. 1897, and hereunto annexed, per-

sonally appeared before me, in the District aforesaid, the said Milton P. Caldwell, and Elizabeth F. Caldwell, being personally well known to me, to be the persons who executed the said Deed, and
 17 acknowledged the same to be their act and deed and the said Elizabeth F. Caldwell, being of full age, and being by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it. Given under my hand and Notarial Seal, this Sixth day of November, A. D. 1897.

ROLAND C. BOOTH,
Notary Public, D. C.

[Roland C. Booth, Notary Public, District of Columbia.]

DISTRICT OF COLUMBIA:

OFFICE OF THE RECORDER OF DEEDS, *May 3, 1905.*

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 2243 fol. 491 *et seq.* one of the Land Records of the District of Columbia.

[SEAL.] JNO. C. DANCY,
Recorder of Deeds, Dist. of Col.

18

COMPLAINANT'S EXHIBIT No. 4.

Liber 2466, Folio 287 *et seq.*

Eugene A. Atchison *et ux.* to Lewis Lee Watson.

Recorded Feb. 16th, 1900, 11-04 A. M. Deed.

\$1.50.

Int. Rev. Stamps Affixed.

This Indenture, Made this Eighth day of February in the year of our Lord one thousand nine hundred, by and between Eugene A. Atchison and Mary H. Atchison his wife both of the District of Columbia, parties of the first part and Lewis Lee Watson of the same place, party of the second part: Witnesseth that the parties of the first part, for and in consideration of Ten (10) Dollars, lawful money of the United States of America, to them in hand paid by the party of the second part, receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release convey and confirm unto the party of the second part, his heirs and assigns forever, the following described land and premises, situate, lying and being in the City of Washington, District of Columbia, and distinguished as Lot Thirty three (33) in

M. P. Caldwell's subdivision of part of square Eight Hundred and Eighty-two (882) as per plat thereof recorded in Subdivision Book 22, page 109 of the records of the surveyor's Office of the said District-Subject however to Deed of Trust for the Sum of One thousand (1000) dollars, which the party of the second part hereby assumes and agrees to pay, together with all and singular the improvements,

19 ways, easements, rights, privileges and appurtenances to the same belonging, or in any wise appertaining and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the part- of the first part, of, in, to or out of the said land and premises: To have and to hold the said land, premises and appurtenances, unto and to the only use of the party of the second part, his heirs and assigns forever. And the said parties of the first part for themselves and their heirs, executors and administrators, do hereby covenant and agree to and with the party of the second part, his heirs and assigns, that they the parties of the first part and their heirs, shall and will warrant and forever defend the said land and premises and appurtenances unto the party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein, by, from, under or through them, and further, that the parties of the first part and their heirs shall and will at any and all times hereafter, upon the request and at the cost of the party of the second part, his heirs and assigns, make and execute all such other Deed or Deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, his heirs or assigns, as the party of the second part, his heirs or assigns, or his or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

EUGENE A. ATCHISON. [SEAL.]
MARY H. ATCHISON. [SEAL.]

Signed, sealed and delivered in the presence of—
S. A. TERRY.

20 UNITED STATES OF AMERICA, *District of Columbia*, To wit:

I, S. A. Terry, a Notary Public in and for the said District do hereby certify that Eugene A. Atchison and Mary H. Atchison his wife, parties to a certain Deed bearing date on the 8th day of February A. D. 1900, and hereunto annexed, personally appeared before me, in the said District, the said Eugene A. Atchison and Mary H. Atchison, being personally well known to me as the persons who executed the said Deed, and acknowledged the same to be their act and deed, and the said Mary H. Atchison being by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed, and declared that she willingly, signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and official seal, this Ninth (9") day of February A. D. 1900.

[NOTARIAL SEAL.]

S. A. TERRY,
Notary Public.

DISTRICT OF COLUMBIA:

OFFICE OF THE RECORDER OF DEEDS, *May 3, 1905.*

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber 2466 Folio 287 *et seq.*
21 one of the Land Records of the District of Columbia.

[SEAL.] JNO. C. DANCY,
Recorder of Deeds, Dist. of Col.

22 COMPLAINANT'S EXHIBIT No. 5.

E. D. 21890 Sub. 12.

Executive Office, Commissioners of the District of Columbia.

WASHINGTON, *April 7, 1903.*

Ordered: That the Commissioners hereby confirm the acceptance of the five foot alley in square 882 created by subdivision of lot 14 in said square into lots, 32, 33 and 34 and alley, made by M. P. Caldwell and recorded July 7th, 1897, by order of the Commissioners; and all obstructions are hereby ordered to be removed.

By order,

WILLIAM TINDAL, *Sec'y.*

23 COMPLAINANT'S EXHIBIT No. 6.

WASHINGTON, D. C.

Lewis L. Watson, 603 L Street, Southeast.

SIR: A survey made by the Engineer Department discovers encroachment on public space from lot 33, square 882, of which the records show that you are the owner, said encroachment consisting of a fence and shed enclosing the public alley to the extent of — feet. In order that the right of the unobstructed use of said alley may not be interfered with, you are requested to have said fence and shed moved to proper line within ten days.

Failure to comply with this notice will necessitate legal action on the part of the District of Columbia.

By order of the Commissioners District of Columbia.

WILLIAM TINDALL, *Secretary.*

24 COMPLAINANT'S EXHIBIT No. 7.

DEC. 18, 1903.

Mr. Lewis L. Watson, # 603 L St., S. E.

DEAR SIR: The Commissioners direct me to inform you in response to your letter of the 8th inst., asking what action was to be

taken relative to paving alley in square 882, that the question of removing some of the obstruction in this alley was carried into the police court sometime since, and the decision of the court was that this was a private alley.

Very respectfully,

WILLIAM TINDALL, *Sec'y.*

25

COMPLAINANT'S EXHIBIT No. 8.

Liber 2298, Folio 397 *et seq.*

EUGENE A. ATCHISON *et ux* to HOWARD M. CARVER.

Recorded May 5", 1898, 9-12 A. M. Deed.

This Indenture Made this 1st day of April in the year of our Lord one thousand eight hundred and ninety eight, by and between Eugene A. Atchison and Mary H. Atchison, his wife, parties-of the City of Washington District of Columbia and Howard M. Carver of the City of Washington and District of Columbia, party of the second part, Witnesseth that the part- of the first part for and in consideration of Ten Dollars, lawful money of the United States of America, to them in hand paid by the party of the second part, receipt of which, before the sealing and delivery if these presents, is hereby acknowledged, have given, granted bargained and sold, aliened enfeoffed, released conveyed and confirmed and do by these presents give, grant, bargain and sell alien, enfeoff, release, *convey* and convey

acknowledged, have given, granted bargained and sold, aliened enfeoffed, released conveyed and confirmed and do by these presents give, grant, bargain and sell alien, enfeoff, release, *convey* and convey unto the party of the second part, his heirs and assigns, forever the following described land and premises, situate, lying and being in the City of Washington, District of Columbia and distinguished as Lot No. thirty two (32) in Milton P. Caldwell's subdivision of original Lot No. fourteen (14) in Square No. Eight hundred and eighty two (882) as per plat recorded in the office of the Surveyor for the District of Columbia in Liber — folio — Subject to an existing deed of trust for one thousand (\$1000.00) Dollars which grantee herein assumes and agrees to pay, together with all and singular

26 the improvements ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining and all the estate, right, title, interest and claim **either at law or in equity, or otherwise however, of the parties of the first part of, in to or out of the said land and premises. To have and to hold the said land, premises and appurtenances unto and to the only use of the party of second part, his heirs and assigns forever. And the said Eugene A. Atchison and Mary H. Atchison, his wife, parties of the first part their heirs executors and administrators do hereby covenant and agree to and with the party of the second part his heirs and assigns, that they the parties of the first part and their heirs, shall and will Warrant and forever defend the said land and premises and appurtenances unto the party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, of interest therein, by,**

from under or through the said parties of the first part, and further, that the parties of the first part and their heirs shall and will at any and all times here after, upon the request and at the cost of the party of the second part, his heirs and assigns, make and execute all such other Deed or Deeds or other assurance in law for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, his heirs or assigns, as the party of the second part his heirs or assigns, or his or their counsel learned in the law shall advise, devise or require. In Testimony

27 Whereof the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

EUGENE A. ATCHISON. [SEAL.]

MARY H. ATCHISON. [SEAL.]

Signed, sealed and delivered in the presence of—

WM. L. FOULKE.

DISTRICT OF COLUMBIA, *to wit*:

I ——— a Notary Public in and for the said District of Columbia do hereby certify that Eugene A. Atchison and Mary H. Atchison his wife, parties to a certain Deed bearing date on the 1st day of April A. D. 1898 and hereunto annexed, personally appeared before me in the said District of Columbia, the said Eugene A. Atchison and Mary H. Atchison being personally well known to me as the persons who executed the said Deed and acknowledged the same to be their act and deed, and the said Mary A. Atchison being by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her by me acknowledge the same to be her act and deed, and declared that she willingly signed sealed and delivered the same and that she wished not to retract it. Given under my hand and official seal this 4th day of May A. D. 1898.

PAUL V. BUNN,
Notary Public.

[Paul V. Bunn, Notary Public District of Columbia.]

28 DISTRICT OF COLUMBIA:

OFFICE OF THE RECORDER OF DEEDS, *May 3, 1905.*

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 2298 folio 397 *et seq.* one of the Land Records of the District of Columbia.

[SEAL.]

JNO. C. DANCY,
Recorder of Deeds Dist. of Col.

Filed May 25, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 24742.

LEWIS L. WATSON, Complainant,

vs.

HOWARD M. CARVER, Defendant.

The defendant, Howard M. Carver now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, imperfections and insufficiencies in the said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as he is advised is material for him to answer, says:—

1st. He admits such of the allegations of the first paragraph of said bill as refer to the citizenship and residence of the complainant. He is without knowledge or legal information as to whether the complainant is the owner of the lot therein mentioned and denies that the complainant is entitled to the free and uninterrupted use or of any use whatsoever of what the complainant refers to as an alley.

2nd. The defendant admits those allegations of paragraph two of said bill which refer to his citizenship and residence and his ownership of the lot in question, but denies that he maintains
30 any unlawful obstruction in what the complainant is pleased to call an alley or in any other place whatsoever, or that he in any wise prevents the complainant from the lawful exercise of any of his rights.

3rd. Answering paragraph three, he denies that the Caldwell mentioned therein, nor any other person ever donated to the District of Columbia, the rear five feet by the width thereof of original lot 14, in square 882, for an alley or for any other purpose. He admits that the said Caldwell sub-divided said lot 14, into three lots and recorded said sub-division in the book and folio set forth in said bill, but he denies that the District of Columbia could accept or ever did accept from the said Caldwell or from any other person who had a right to donate the same, any part of said lot 14. He denies that any part of said lot has ever been dedicated for public use as an alley, or for any other purpose.

4th. Answering paragraph four, he admits that said Caldwell conveyed the lots mentioned in paragraph four to Eugene A. Atchison, but denies that said conveyance was made subject to the rights, ways, easements and privileges of any alley. He admits the erection by said Atchison of a house on each of said lots and admits that said Atchison erected stables or sheds on that part of the land which the complainant claims to have been donated by said Caldwell and ac-

cepted by the District of Columbia, but he denies that said stables or sheds were erected upon that land by mistake, or that said land had ever been donated by said Caldwell or accepted by the District of Columbia, or that the title thereto was in the District of

31 Columbia. This defendant knows nothing about the said Atchison having offered to remove the stables which he had erected on the lot owned by this defendant or to whom it is claimed he made any such offer; but he says that if such offer was made before the sale of said lot to this defendant, that it was never complied with by the said Atchison, and if made since the sale of said lot to this defendant, the said Atchison's offer was in reference to something about which he had nothing to do, and was without force and effect. He denies that the complainant has any right to that land, which complainant describes as part of an alley, adjoining the rear of the defendant's lot, or that the defendant maintains any obstruction that in any wise interferes with the legal or equitable rights of the complainant, or that he has caused the complainant any damage or loss whatsoever but on the other hand he says that when he purchased part of original lot 14 from said Atchison, that the said Atchison was in possession of all of the same and had built stables or sheds upon that part thereof which the complainant now claims to be a public alley, that defendant inspected the property before he purchased the same and discovered the same in the condition set forth, that he purchased lot 32, with all of its privileges, rights, ways and appurtenances from said Atchison, believing that it included the stable to the rear of the same and the land upon which it was built, and entered into occupation thereof, that subsequently the complainant purchased lot 33 from the said Atchison having before his said purchase inspected the property and well knowing that that part of said original lot 14 which he now claims to
32 be a public alley had been built upon by the said Atchison and that the defendant was in occupation and possession of so much of the same as was located in the rear of lot 32; that no part of said lot 14 has ever been used as an alley or as a means of ingress or egress to or from the complainant's lot. That on the 4th day of February, in the year 1905, the said Milton P. Caldwell and Elizabeth F. Caldwell his wife by deed duly executed, transferred and conveyed to the defendant in fee simple, all of his right, title and interest to said original lot 14.

5th. Answering paragraph five, the defendant admits that at the instigation of the complainant and others, the District of Columbia endeavored to have the said stables and sheds removed, claiming that they obstructed a public alley and requested the owners of lots 32, 33 and 34 to remove said stables and sheds and that complainant complied with the notice of the Commissioners, and that defendant refused to comply therewith and that defendant was thereafter brought before the police court, charged with obstructing a public alley, but the defendant avers as heretofore set forth that the same was not a public alley, that the Commissioners could not accept the same because among other reasons that it had never been donated and was of an improper width to constitute a public alley and that

by a decision of the said police court in said proceedings between this defendant and the District of Columbia, it was finally held and determined that the land in question did not constitute a public alley.

6th. Answering paragraph six, this defendant says, that the said Atchison took possession of all of original lot 14, assuming
33 ownership thereover, built upon all of that part which is now contended by the complainant constitutes a public alley, sold to this defendant lot 32, as including the land upon which said shed or stable were built, the defendant believing and so accepting the same; that the said Atchison would have no right to compel the removal of said shed after he had sold as aforesaid lot 32 to this defendant but would have been stopped from so doing, and that the complainant thereafter taking title through said Atchison possesses no such right and that if the title to the rear five feet of said lot 14 was not in the said Eugene Atchison at the time he conveyed said lot 32 to this defendant, then the same was in the said Milton P. Caldwell and passed from him by aforesaid deed to this defendant; that the District of Columbia owns no part of said original lot 14 by dedication or otherwise, that this defendant holds his title subject to no rights, ways, easements or privileges to the complainant whatsoever, that he maintains no improper obstruction and does not illegally or inequitably prevent the complainant from the use of any of his rights or privileges. He denies that he has caused the complainant any damage or loss whatsoever, and avers that the complainant has full and sufficient means of ingress and egress of his lot to the front thereof. He denies that he obstructs any alley or that he has created or maintained any obstruction which causes an irreparable damage and financial loss to complainant or to complainant's real estate or depreciates the same in value. Where-
34 fore having fully answered said bill, this defendant prays that he may be hence dismissed with reasonable costs in this cause sustained.

HOWARD M. CARVER.

ARTHUR PETER,
Solicitor for Defendant.

I, Howard M. Carver do make oath and say that I have read the foregoing answer by me subscribed and know the contents thereof, that the matters and facts therein stated upon my own knowledge are true and those stated upon information and belief, I believe to be true.

HOWARD M. CARVER.

Subscribed and sworn to before me this 4th day of February, 1905.

EMORY H. BOGLEY,
Notary Public.

Stipulation.

Filed May 25, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 24742.

LEWIS L. WATSON

vs.

HOWARD L. CARVER.

It is stipulated by and between counsel for the complainant and defendant herein that the copies of the bill, answer, complainant's Exhibits numbered from 1 to 8, both inclusive, and the
 35 *complainant's* demurrer shall stand in lieu of the originals thereof, which have been lost or mislaid, with the same force and effect as if the said copies were in fact the originals.

JOSEPH H. STEWART,
Solicitor for the Complainant.

ARTHUR PETER,
Solicitor for the Defendant.

36

Complainant's Testimony.

Filed May 25, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 24742.

LEWIS L. WATSON

vs.

HOWARD L. CARVER.

WASHINGTON, D. C., *February 25th*, 1905—Saturday,
 at 2 o'clock p. m.

Met, pursuant to notice, to take testimony on the part of the complainant in the above-entitled cause.

Present: Joseph H. Stewart, Esq., Solicitor for the Complainant, and Arthur Peter, Esq., Solicitor for the Defendant; and the Examiner.

Whereupon LEWIS L. WATSON, the complainant, and a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. STEWART:

Q. Mr. Watson, you are the plaintiff in this case? A. Yes, sir.
 Q. What is your business? A. As a waiter.

Q. I believe you have stated your residence? A. Yes, sir, No. 603 L Street, Southeast.

37 Q. Just state whether or not you are the owner of lot 33 of M. P. Caldwell's subdivision of Square 882. A. I am.

Q. Now, state whether or not you know there is an alley at the rear of that lot. A. Well, you want me to start down a little when I purchased the place?

Q. Yes, just start right there. A. Well, when I entered into negotiations to purchase the place, when I ascertained these questions, there was not any other house on this square but these three houses, and they told me there was an alley-way there, and it was run down through the——

Mr. PETER: One moment. This is objected to on the ground that it does not appear that his information came from any source that he was justified in acting under.

A. (Continuing:) That there were an alley at the rear of my building, and I also went to the Surveyor's Office and looked on the plat there to see it for myself. There was a five-foot alley. Well, then, I supposed it would be opened when the parties came to build up there. They closed it up against the sheds. Well, then, I applied to the Commissioners about it, and they informed me that they would look into the matter and have it opened, which I got another letter from them to move my shed within the five feet space that was allotted for all of them for this alley. I think that the

38 next neighbor to me did the same. That was after all these buildings were being put up there, you see, and the owner of the house that I bought from, when I asked him about this, he said it was—the sheds was all erected out too far through a mistake by the workmen, and that he had preference to move this one that obstructs the way, at his own expense.

Q. Now, did I understand you to say that there was no other house in the square except these three houses at the time you purchased?

A. No, sir, but them three houses. They built up the M Street side, Sixth Street and L Street, going up toward 8th Street.

Q. Now up to the time that they built those houses, just state whether or not you knew that those sheds were on the alley? A. They were on the alley.

Q. I say, but did you know that they were on the alley? A. No, I did not.

Q. Not until after the houses were built there?

Mr. PETER: Well that is leading.

A. (Question not answered.)

Q. Well, after you found out that the sheds were on the alley, what did you do? A. I applied to the Commissioners about it.

Q. Did you receive any communication from the Commissioners? A. I did. I received a communication that it had been accepted as a five-foot alley there for the benefit of those three houses.

39 Q. I am going to ask you to look at Exhibits Nos. 5, 6 and 7 attached to the bill, and ask you to say what those
3—1645A

exhibits are. (Showing witness exhibits.) Just say whether or not you received them, and if so, from whom? A. This is a copy of the letter that I received from Col. Biddle, isn't it? (Referring to Exhibit No. 5.)

Q. Who is Biddle? A. The Commissioners' Office, over here in the Commissioners' building.

Q. Now, this is Exhibit No. 6. Just tell us where you got that from, and say if you received it; whether or not you did. A. I did certainly receive this too.

Q. Where is that from? A. This is from the same office, in the Commissioners' building.

Q. Now, No. 7, did you receive that? A. Yes, sir.

Q. Where from? A. From the Commissioners.

Q. From the Commissioners? A. Yes, sir.

Q. Now, those communications were sent to you by the Commissioners? A. Yes, sir—sent to me through mail, from the department—the Commissioners of the Streets.

Q. What had you done to receive these communications? A. I had wrote to them in reference to this alley, inquiring about the condition of affairs.

40 Q. I also show you Exhibit No. 4, and ask you to say what that is. A. This is the deed, or a copy of the deed.

Mr. PETER: Well, which is it—the deed, a copy, or the original?

Mr. STEWART: It is a copy.

By Mr. STEWART:

Q. Can you tell what Exhibit No. 8 is? A. It is a deed.

Q. Well, from—read there and just tell me what it is. I don't want you to read all the words on the deed. I just want enough to know just what it is.

A. Deed from Mr. Achison granted to Mr. Carver, the same as my own.

Q. Now tell us about that one, Exhibit No. 3. A. It is a copy of the deed form Caldwell to Achison.

Q. Now, about Exhibit No. 8. A. That is a copy of the deed from Achison to Carver.

Mr. PETER: Did I understand you to offer that in evidence?

Mr. STEWART: I am going to offer them in evidence, yes.

By Mr. STEWART:

Q. What effort, if any, have you made to have that alley opened?

41 A. The effort that I have made at first was to the Commissioners, and the second part, I had a suit filed last year. That was the only way I was told that I could ever get satisfaction.

Q. State, Mr. Watson, what damage, if any, you have suffered by having this alley closed up. A. Well, I have suffered a good deal through sickness and through inconvenience, or having to have my place opened, that would cause constant draughts, and get in more cold there in the winter; even not more than a month ago that my wife is now ill very much from it, and consequently it has been quite a continuance of trouble with me, and very greatly

depressed the inconvenience of getting in and out; carrying the ashes through the front, and everything else, and the garbage, from the rear to the front, in order to get it out of the place, or anything out or in. I have got to bring it into the front way, and have it stand open until they are through. It makes it a very great inconvenience.

Mr. STEWART: I want to offer a copy of these deeds in evidence—office copies—and I reserve the right to have the records in Court at the hearing.

Mr. PETER: Just let me understand what you are offering in evidence.

Mr. STEWART: Well, I offer those copies in evidence.

Mr. PETER: Well, which copies?

Mr. STEWART: Exhibits Nos. 3, 4, 7, 8, and the original records of the Recorder of Deeds' Office.

Mr. PETER: This Exhibit No. 3 purports to be a deed from Caldwell and wife to Eugene Achison.

42 Cross-examination.

By Mr. PETER:

Q. Did you make the copy? A. No, sir.

Q. Did you compare it with the original? A. My counsel did.

Mr. PETER: I object to that on the ground that it has not been proven to be a true copy, and that the original is the best evidence.

Q. Your counsel also made what purports to be a copy of the deed from Achison and wife to Watson, did he not? A. Yes, sir.

Q. You never compared it with what, in your mind, is the original, have you—you have never compared this? A. I compared the original suit. I read that all over; in the beginning of it.

Q. No, I mean did you take this—— A. (Interposing.) One paper with the other and compare it with?

A. Yes. A. No.

Mr. PETER: Objected to on the same ground.

Q. The same is true in reference to the deed—to what you have testified is a copy of the deed from Achison to Carver, is it not? A. How do I understand you?

Q. Your counsel made the copy; you never compared it with the original? A. No, I never did.

Mr. PETER: Objected to, for the same reason.

43 Q. When did you buy this property? A. I bought it in 1900, I think it was. I just can't remember the date.

Q. Well, as near as you can.

Mr. STEWART: The deed is the best evidence of that fact.

A. Yes, it shows on the deed when I bought it.

Q. Well, I want your best recollection, in addition to that. A. Well, as near as I can come at it, it was bought in 1900. If my

memory is right, this is 1905, and I have been living in the house over four years; going on five years.

Q. What did you pay it with? A. I paid \$1500.

Q. How much cash?

Mr. STEWART: Well, I object to that. It is immaterial and incompetent, and not responsive to the direct-examination.

Q. (Continuing:) How much cash? A. \$150 cash.

Q. Trust still on it? A. Part of it.

Q. How much is on it now? A. \$700.

Mr. STEWART: I object to that also.

Q. You know Mr. Carver, don't you? A. I know him when I see him.

Q. When you bought this property, Mr. Carver was living in the same house he is living in now? A. Yes, sir.

Mr. STEWART: I object to all this as not being proper
44 cross-examination.

Q. His stable covered the ground that it covers now, didn't it? A. Not exactly.

Q. What is the difference? Q. Because it has been cut off, sir, and shoved back. His shed was in the way of the house that went up adjoining him.

Q. You claim that it covers five feet of ground that constitute the public alley, don't you? A. Yes, sir.

Q. And your claim is that the title to that land is in the District of Columbia, isn't it?

Mr. STEWART: I object to that. That is not cross-examination. It is a question of law. The witness knows nothing about that.

Q. (Continuing:) Answer the question. A. Well, I don't know how to answer that question. You want me to answer you truthfully what I know?

Q. Certainly. A. Well, I don't know.

Q. Did you swear to it in your bill, that it was a public alley that belonged to the District of Columbia? A. Yes, sir, why certainly.

Q. So that is your contention, isn't it? A. Yes, sir.

Q. Now, when you bought your house Mr. Carver's stable was standing on these five feet of ground that you contend belongs
45 to the District of Columbia, wasn't it? A. Yes, sir.

Q. And you saw it there before you purchased the property, didn't you? A. Why certainly.

Q. You went down and inspected the premises before you bought? A. Yes, sir.

Q. Looked at your own property? A. Yes.

Q. Looked at the property next door to it? A. Well, I didn't look at that; I just seen it, as a matter of course, like I am looking at this building now.

Q. Well, you say that there was a shed on each one of these lots? A. All three houses.

Q. Covering the land that you now claims belongs to the District of Columbia, didn't you? A. Yes, sir.

Q. And you thought, when you were buying your lot, that included the shed to the rear of your building, didn't you? A. It included it?

Q. Yes, sir. When you bought your house and lot, you thought it included the shed that was on the rear of your lot, didn't you? A. Certainly.

Q. And you thought it included the land upon which that shed was erected, didn't you? A. Now, wait. I bought it with
46 the understanding that the shed was not in the proper place.

Q. Now, I want you to answer this question. You went there and inspected the property? A. Yes, sir.

Q. Before you bought it? A. Yes, sir.

Q. And you bought it supposing that the shed on the rear of your lot was on your property, didn't you? A. No, sir.

Q. On whose property did you think it was? A. Well, I supposed it was—I knew it was on this alley; that was explained to me, when I went through it, when I asked why it was not in its proper place, and then Mr. Achison, the gentleman I bought it from, said it was erected out too far by mistake through his workmen.

Q. Mr. Achison told you that? A. Yes, sir.

Q. When did he tell you that? A. I don't know that, sir. He has told me that, sir.

Q. Well, I want to know from you when he told you. A. Well, I can tell you one thing; I can tell you once when he told me that, but whether that was the first time or what not, I don't know. I don't just remember. I ain't got day and dates for it, but he told me on the 9th day of February.

Q. What year? A. 1900, or whatever year it was I bought it in.

It was 1900, I think I bought it in; I ain't positive, now.

47 Q. He told you on the day that you purchased it? A.

Yes. I think it was in February when I questioned him about it, and he said, when I was paying the money, and I think it was, my best memory is, it was the 9th day of February that I paid the first dollar for it.

Q. What did he tell you? A. He told me just like I have stated here.

Q. Well, what was it again? A. Well, that the shed was not in its proper place, and I asked him in reference to the alley. He said some day these other people will build out here at the rear, and I said: "What outlet will I have?" and that is the way he came to tell me. That is the way the conversation came up.

Q. Where did he tell you the shed should be? A. He said there was a five-foot alley there, and then, to satisfy myself that he was telling the truth, I went to the District Building here, at the City Hall, and looked on the Surveyor's plat there, and they showed it to me, and I saw for myself.

Q. Did he tell you that that shed of yours covered the five-foot alley? A. No, he said—I can't say positively that he said it covered it all, but he said it was out too far on the alley.

Q. How much too far? A. He didn't designate the number of feet or inches. He just told me it set over the alley through mistake.

Q. Did you ask him anything about the shed next to
48 yours? A. No. I had no right to ask him; oh, no.

Q. All you were interested in was in finding the boundaries of your land? A. He said the whole three of them were out too far, and, of course, that stopped the conversation about it.

Q. Then he did tell you about the sheds on the other land? A. Of course he did, sir; all three of them.

Mr. STEWART: I object to this as not responsive and immaterial.

Q. And he explained to you about Mr. Carver's, too didn't he? A. He explained to me, at the same time, about the whole business being out of the way.

Q. And told you Mr. Carver's was out too far? A. Yes, sir.

Q. Did he tell you how much it was? A. No, sir.

Q. It may have been one inch? A. He just said the shed was out of place through a mistake by his carpenter, and that he had preference to move Mr. Carver's shed, and all of them, back in the proper place.

Q. That he intended to do it? A. He had offered to do it; to move his'n.

Q. Who do you mean by his'n? A. Mr. Carver's.

Q. That Mr. Achison had offered to move Mr. Carver's
49 back? A. Yes, sir, and the other two; the same time he was going to move the whole business.

Q. And Mr. Carver was the owner——

Mr. STEWART: I object to the conversation. It is not material, and not responsive to the direct-examination.

Q. (Continuing:) He told you that Mr. Carver was the owner of a lot, didn't he? A. I don't know whether he told me that or not.

Q. He must have told you that, didn't he? A. I didn't ask him. I asked him only in reference to the alley, and he told me that the parties—I don't think he used Mr. Carver's name—I think he only used the word to the best of my knowledge, the parties who owned the other houses, and this one I have got—through mistake the carpenter had put the sheds out too far, and the fences, and I preferred to move it, and he objected to the moving of his shed, Mr. Carver did.

Mr. STEWART: I object to this cross-examination as going over and over, right straight along, the same thing. It is not material and not responsive to the direct-examination.

Q. Mr. Achison told you that at that time, did he? A. Yes, sir, he told me.

Q. He told you then that Mr. Carver objected to having his shed moved? A. Having him to move it.

Q. Having him, Mr. Achison, to move it? A. Yes, sir, Mr. Carver objected to it.

50 Q. When did you first discover how much of what you call the alley your shed covered? A. What do I understand you to say?

Q. When did you first discover how much of what you now call a public alley your shed covered? A. When I first went to look at the place.

Q. You knew then that it covered the public alley? A. Yes, sir.

Q. When did you move the shed off the alley? A. I just don't know the day and date of it. I got papers home, though.

Q. Well, as near as you can, your best recollection? A. When the Commissioners authorized me to move it. After it could not be done by individuals, he sent me a letter to that effect, to move my shed in the proper limits; sent a man down there to measure it.

Q. Why had you been occupying a public alley up to that time? A. I hadn't been occupying it. It was just simply to wait the decision what should be done with it, as it was through a mistake, that it got to be a mistake, and if there was going to be no alley for me, it was no use for me to go to the expense to move, and, in fact, it was not going to benefit me or the District, or anybody else.

Q. Then you knew all that while that it was in controversy whether it was a public alley or not? A. I knew that there
51 was an alley there, and in the beginning of it, as I first said, these buildings were not erected then; erected on the Sixth Street side set right jam up against the alley that the shed was over, and they pushed them out of the way some little distance; I don't know how much off of each one.

Q. Whom do you mean pushed the shed away? A. I said the gentleman who built the houses.

Q. You mean people to the rear of the lot, that they started to erect buildings there, and that they caused you to move your shed back an inch or two? A. So they could put up their buildings. They didn't cause me to move it; they took and cut it off themselves right there.

Q. Cut off part of your shed? A. Yes.

Q. And you then continued to use all of the land from the front of the lot right back to the buildings, right to the rear of you, did you? A. I did not.

Q. What did you do? A. I piled my ashes there in the middle of the yard. I had to carry them out through the front way.

Q. You put your ashes then in the shed? A. I said in the middle of the yard.

Q. You still have got your shed on what you call the public alley? A. The shed stands there, yes, sir.

Q. Do you use the shed at all for any purpose? A. Yes; use it for just what it was put there for.

52 Q. And you continued to use the shed from the time you bought it up until when? A. Up until now.

Q. You are using the shed now? A. Yes, sir.

Q. Well, how long did you continue to use it, with it standing over the public alley? A. I don't know.

Q. Well, as near as you can? A. Up until I moved it—I don't know how many years.

Q. Ten years? A. Oh, no; I have not been on the premises ten years.

Q. Well, then, I want you to tell me as near as you can? A. Well, I suppose year before last, I think it was, that I had to move that shed. That would be 1903.

Mr. STEWART: I object to this cross-examination. There is a record here that shows when these sheds were moved.

Q. How long was that after the people had cut off the rear of your shed? A. I don't know, sir.

Q. As near as you can? A. Well, I gave you the best I can say, because I don't know.

Q. Well, I want it as near as you can. A. Well, I ain't going to fix no date, because I don't know. I am sworn to give you the best of my knowledge, and I did that, because I don't know even
53 what year they started to building there even after I moved in there.

Q. Well, then, I want you to tell me why you didn't move the shed off of the public alley? A. Why I didn't?

A. Yes. A. I did move it.

Q. When did you move it? A. Well, I tried to tell you the best I knew.

Q. Well, why didn't you move it before that? A. He has got a record there to show for when I was authorized to move it, in its proper limits.

Q. Well, you used it on the public alley for two or three years, didn't you? A. No, I don't think I did.

Q. Well, how long did you use it on there? A. Well, I say I used it a year there, just like it stood, until I got these instructions from the Commissioners about it. I had to inquire first of the Commissioners to know what was mine and what was not mine.

Q. Well, you didn't move it until you first got instructions from the Commissioners to do so? A. I didn't do it. I didn't do a thing to it, and there is the writing there to show for it.

Q. When did you first, or did you ever ask Mr. Carver to move his shed? A. I never said nothing to Mr. Carver in my life about anything, more than to give me a pitcher of water once last
54 winter when my water was frozen, and he did that very gentlemanly.

Mr. STEWART: I object to this cross-examination as being incompetent and irrelevant and immaterial.

Q. You lived there next to Mr. Carver? A. Yes, sir.

Q. And knew that his shed covered what you called a public alley? A. That is what the Commissioners call the public alley; I didn't call it anything. I call it only what these people gave it to me for.

Q. Well, what the Commissioners called a public alley for three or four years—about three years, and never said anything to Mr. Carver about it? A. No; I never asked Mr. Carver no questions at all.

Q. Did you first go to the Commissioners, or did the Commissioners come to you about it? A. I wrote to the Commissioners.

Q. To do what? A. To find out what should be done about this five feet of alley that was left there in the rear of my lot, and they

received a letter from me, and their refusal to me to state what their decisions were.

Q. Well, what made you take that step at that time—what made you write to them? A. I wanted an outlet.

Q. Why hadn't you written to them before that? A. I was awaiting the decision of Mr. Achison. He told me in the beginning that he would try to get him to move out of the way, or allow him to move it out of the way, and I waited on his decision until I——

Q. Now, don't you know, as a fact, that the reason you complained was because these people built up to the rear of you? A. No, it was not; it was nothing of the kind. I contended for it from the first day, before I even did a thing on the place; I wanted to have it in its proper place, and to have the proper way out of it.

Q. Was it before or after the people built up behind you that you complained to the District Commissioners? A. It was right after they built up there.

Q. Right afterwards? A. Yes, sir.

Q. Then their building up there had no connection whatsoever with your complaint? A. No, because—now, I was told by the authorities that I purchased of that this here rug—I will have to bring it to you that way in my senses of it, as far as I came over to there (indicating), would be this bare space here—would be the access to the rear of this rug of my lot. At the rear of my lot there is five feet space left there for this alley, and after this house was built there, of course it came up and the fence was out of the way—out of the place—covering this space.

Q. Did you raise any contention with those people when they cut into your shed? A. No, indeed.

Q. Just let them cut right in your place and said, "Go ahead."? A. Oh, I was not even there to see it.

Q. Did you raise any contention after they had cut into it? A. No; of course I had no right to be in their way.

Q. Well, did you know, before that, that you were over on their lot? A. I told you that, sir, yes, sir; I was not over on their lot. No, I did not really know that I was on these other people until after they cut this much off of it.

Q. And when they cut into your place, you accepted their verdict that you were on their lot, without doing anything further, and allowed them to cut part of your shed down? A. The surveyor was right there and surveyed the ground off.

Q. Before they cut into it? A. The survey for the alley space, yes, before it was cut for them to erect their buildings.

Redirect examination.

By Mr. STEWART:

Q. Mr. Watson, after you had purchased that place did you know that your shed was on the alley? A. Yes, sir.

Q. Did you find out that fact after you had purchased it? A. I knew it before I purchased it.

Q. Who told you? A. Mr. Achison, because I questioned him about that—any outlet to the rear. I said some day this place will be built up again around here, and he will tell you that. I said that to him. He told me if I did not believe him to go to the Surveyor's Office and I would see for myself, and I did so.

Q. Were you there when the Surveyor surveyed that ground and showed where the five-foot alley should be? A. I were not. My wife were there and asked the surveyor about it the day that he did the act.

Q. Well, Mr. Achison told you—did he tell you that he would remove these sheds?

Mr. PETER: Objected to as leading.

A. Mr. Achison told me that he would remove the sheds, all of them.

Q. When did he tell you that? A. When I spoke of this alley business.

Q. That was at the time you were purchasing? A. That was when I was going into agreement to purchase. This conversation was going on while the deed was being run down in the title court, or title, whatever you please to call it.

Q. The Title Company, you mean? A. The Title Company, or something, I don't know.

LEWIS LEE WATSON.

Subscribed before me this 20th day of April A. D. 1905.

J. ARTHUR LYNHAM, *Examiner*.

58 EUGENE A. ACHISON, called as a witness on the part of the complainant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. STEWART:

Q. Just state your name and occupation. A. Eugene A. Achison; 751 Bismarck Street, Northwest; occupation, painter.

Q. At one time you were owner of lots 32, 33 and 34 of Caldwell's Subdivision of Square 882, were you not? A. Yes, sir.

Q. And built houses on those lots? A. I did.

Q. Now, Mr. Achison, please state how the sheds were built over the alley at the rear of these houses.

Mr. PETER: Objected to as leading.

Q. Just state in your own way how the sheds were put on the square of ground where they are. A. Well, they just happened to be put there by mistake. I don't know whether it was my mistake or my workman's mistake. Mr. Carver knew that there was to be a five-foot alley there, because when he was about to purchase the house he made arrangements with me if I would put him a stable there instead of a little shed that I was going to erect to the house, and we went back and I said: "Now, there is a five-foot alley

59 here, and at some future time there will be another five foot taken off this man's lot here and then you will have a ten-foot alley, and he said "Put the door of the stable on this side of the alley, and we will have more room." The sheds were erected there, as I said, by mistake. I don't know whether it was my mistake or the carpenter's, but I think it was the carpenter's.

Q. Now state, Mr. Achison, what, if anything, you did after that—after they were erected, to correct that mistake. A. Well, in the course of two or three years, I think probably three years, I guess, they re-subdivided that square there and they ran alleys in a different direction, and they commenced to build some houses there, on Canal Street; they put up a row of houses on Canal Street, and they took that little bit, about four inches, off of these sheds. I

Carver

think they took part of Mr. Caldwell's stable, too. Yes, I understood they did, just about four inches, and, if I am not mistaken, Watson came to the house and told me that they had built some houses there on Canal Street, and they had torn down part of his shed, and I said: "Well, it could not be possible, if they did they were building over a five-foot alley. So I went down the next day and I took my rule with me and I measured it, and I found out that, instead of their being over on the alley, that my men had put the shed over on the five-foot alley. I then rang the bell at Mrs. Carver's at the time and told her that there had been a mistake there, and that I had come down to see about it; that I would move these sheds back, which I thought it was no more than right that I ought to move them back at my own expense, as I had made a mistake.

60 I had not had any controversy with Mr. Carver at that time, because that was the first time I knew anything about it, and I don't know what reply he made, but Mr. Carver, I think, came to see me, or I went to see him again, and he objected to moving it back. Now, that is all there is in it in regard to what I know. I then came back, after Mr. Carver objected to it, and wrote a letter to the Commissioners stating that there had been a mistake by myself or my men, in putting those sheds over the alley, and requested them to look into the matter. I got a reply from Dr. Tindall, the gentleman that is in the other room there now——

Mr. PETER: I object to the contents of the reply.

A. (Continuing:) Well, I don't know that it is material. Then I went down and seen Dr. Tindall about it, and he said he would do the best he could for me. So the thing dropped, and I didn't hear any more of it for quite a little while afterwards, and then I got John Ridout to write to the Commissioners, but we never could do anything in regard to the matter, but when I sold Mr. Carver that house he knew that there was an alley there, and he also knew it by the plat, because when I sold him the house I sold him lot number so-and-so, according to the plat as recorded in the Surveyor's Office; and then his lawyer, whoever he was, went there, and he could not help from seeing that it was platted with a five-foot alley back of it. So that that is really all there is in it.

Cross-examination.

By Mr. PETER:

Q. Do you own any one of these three houses now? A. I
61 do not now.

Q. Did you own any of them at the time you complained to the District Commissioners? A. I do not think I did, no sir.

Q. When did you dispose of the last one of them? A. I could not tell you, sir.

Q. So you might have owned one at the time? A. I might have. I won't be positive about that. I might have owned one.

Q. You consulted Mr. Ridout about it? A. I did.

Q. I assume you paid him a fee for the consultation? A. Well, I guess I did. I didn't pay it to him then. He got it afterwards.

Q. And yet you had no interest in the controversy at that time? A. Yes, I had quite an interest.

Q. What was it? A. It was my mistake and I felt that I should rectify it. I sold these houses to Mr. Carver and to Mr. Watson and I was in duty bound to correct that mistake, if possible.

Q. Then your interest in the matter at that time was on behalf of Mr. Carver, and on behalf of Mr. Watson? A. I don't think it was on behalf of Mr. Carver. I think it was on behalf of Mr. Watson and Mr. Foulke, because Mr. Carver had an outlet. I think I sold that house to Mr. Foulke at that time, and Mr. Carver being on the alley, shut them up. I was not at all interested in Mr. Carver, because he was on the corner, and he could get out.

62 Q. Mr. Carver's shed covered the same territory when you sold it to him that it did at the time you undertook to compel him to remove it, did it? A. Yes, sir.

Q. You are very friendly with counsel for the complainant? A. I never saw him but once before, and that was the other day, when I was requested to call down to see him.

Q. You say you went there on one occasion and measured it with your rule? A. Yes, sir.

Q. When was that? A. Well, if you want dates, I could not give them to you. It was the next day after Mr. Watson informed me of these houses being built up against his shed, you know.

Q. And you then discovered that those houses were not on the alley? A. I did.

Q. But that Carver and Watson were on the alley? A. Yes, sir.

Q. And then, after you thus became acquainted with the fact, you thought it your duty to tell Mr. Carver to get his building off the alley? A. No, sir, I did not say so.

Q. Didn't you tell him to do it? A. I did not, sir.

Q. Didn't you tell his wife to do it? A. I did not, sir.

Q. Then, having sold Mr. Carver the property, you went off to the Commissioners and wanted them to institute proceedings against him without even having notified him—— A.

63 (Interposing.) No, sir, I beg your pardon.

Q. Well, which is true? A. Well, all right; I am telling the truth. I know what I am doing. I told you that I went down

to Mr. Carver's and pulled the bell, and saw Mr. Carver's wife, and that I asked her what I should do, and that then Mr. Carver either came to see me or I went to see him again, and he refused, and then I went to the Commissioners; that is, I didn't go, but I wrote a letter, and then I went to Ridout. Now, that is what I told you.

Q. You took a very active interest in it? A. I did.

Q. And have taken a very active interest in it ever since? A. No, sir; I beg your pardon, sir.

Q. When did your active interest cease? A. My active interest—I haven't heard anything in regard to the case for probably eighteen months, until here about a week ago.

Q. I say, when did it cease—you said at one time you took an active interest in it. A. When I found out that the Commissioners would not do anything.

Q. Why would not the Commissioners do anything? A. I cannot answer that question. You will have to find out from them.

Q. Do you mean to say that they did not tell you? A. They refused.

Q. The Commissioners refused to give you any reason—
64 A. (Interposing.) They might have given Mr. Ridout the reason why, I don't know, but Mr. Ridout never reported it to me.

Q. You paid Mr. Ridout to find out, did you?

Mr. STEWART: I object to this testimony about Mr. Ridout.

The WITNESS: I will answer any question that the gentleman puts to me; you need not object to it.

Q. (Continuing:) You paid Mr. Ridout to find out for you why the Commissioners would not— A. (Interposing:) Well, now, while you are speaking about paying Mr. Ridout to find out for me—Mr. Ridout has been my lawyer for the last fifteen or twenty years, and whenever there was anything that came up that I had to have a lawyer, I went to Mr. Ridout, and there was not any special fee paid him for any one individual case. Now, I don't know as I paid Mr. Ridout for writing that letter. He might not have charged me anything.

Q. So you did not pay Mr. Ridout? A. I don't know that I did.

Q. But, at any rate, you got him, either with or without pay, to write a letter, and he may have found out? A. And might have conferred it to me. I have no recollection.

Q. You can recollect all these other facts correctly? A. Certainly.

Mr. STEWART: I shall have to ask the Court to tax Mr. Peter with the costs in this connection.

Q. You have a pretty fine memory, have you? A. I have a pretty good memory sometimes on certain things, and it comes
65 mighty near being right that I remember, but anything that aint no good I don't remember.

Q. And under that classification you excuse yourself for not

recollecting what the Commissioners determined? A. No. I don't excuse myself, because I don't think I paid much attention to it. Mr. Ridout wrote the letter.

Q. Did you and Mr. Carver have any words over the matter? A. I don't think we ever did. I am friendly with Mr. Carver.

Q. Well, don't you know whether you had any words or not? A. I do not, no, sir.

Q. That is another one of those things that your memory is especially good about? A. I guess it is, probably. If we had any words, I don't remember it. If we did, why my memory is very faint on the subject.

Q. I understood you to say that it was when you measured there with your rule that you discovered where the alley was? A. Yes, sir; I discovered that the sheds were over the alley.

Q. You said that you told Mr. Carver that when five feet more had been given on the other side, that the alley would be open, didn't you? A. No, sir.

Q. What did you say about that? A. I said that there was supposed to be, when the other place was subdivided, that
66 another five feet would make a ten-foot alley.

Q. And you did know that there could not be a public alley under ten feet at that time, didn't you? A. I didn't know that there could not be a public alley under ten feet?

Q. Yes. A. I don't know as I did. I don't know whether it could be or not. I have a public alley that is back of five houses on M Street now which is the same way that Mr. Carver has; the three feet open to anybody that wants to go in there.

Q. Who told you that somebody else was going to give five feet to the rear? A. I don't know that anybody did.

Q. And yet you, in selling to Mr. Caldwell, you explained to him how he was going to get a ten foot alley? A. I have made so many subdivisions, and when I make a subdivision I have to leave five feet with the supposition that another five feet will be taken to open up an alley through, and suppose that when that square was subdivided down there, instead of continuing the alley the way that we subdivided these lots, they came around in another way, and I suppose that is why they abandoned it, and took them another way.

Q. You knew that in subdividing the custom was for the lots fronting on one street to give five feet and the lots fronting on the other street to give five feet? A. Yes, sir.

Q. And to thereby get ten feet for a public alley, didn't you? A. Yes.

67 Q. And you told Mr. Carver that the other people would give five feet and then there would be a public alley there? A. I didn't tell him anything about the public alley. I don't remember ever saying anything about the public alley.

Q. Well, there would be an alley there? A. Yes, sir, a ten-foot alley, that is what I said.

Q. Well, what kind of an alley did you think it was going to be? A. Well, I supposed a public alley, but I didn't tell him a public alley.

Q. But after the other persons would give five additional feet, there would be an alley? A. Yes, sir.

Subscribed before me this — day of — A. D. 1905.

— — —, *Examiner.*

68 Thereupon Dr. WILLIAM TINDALL, called as a witness on the part of the complainant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. STEWART:

Q. Doctor, state your business, and name and residence. A. William Tindall; Secretary of the Board of Commissioners of the District of Columbia.

Q. Doctor, I show you Exhibits Nos. 5, 6 and 7, and ask you to tell me what they are, and where they came from—first, I will ask you whose signature is signed to those. A. It is mine.

Q. Your signature is attached to those papers in the course of your official duties? A. Yes, sir.

Q. And you were directed to send them to the persons whose names appear on them? A. Yes, the persons whose names appear; that's right.

Q. You didn't send that letter out until after the Board had taken the action designated?

Mr. PETER: I object to that as leading, and as asking for evidence as to the conduct of the Board of Commissioners, when there is better evidence of what they may have officially done.

69 Q. (Continuing:) Just state, Doctor, whether or not they were sent out in the regular routine of business. A. They were sent out in the course of business.

Mr. STEWART: I offer those exhibits Nos. 5, 6 and 7 in evidence.

Q. I will ask you, were those letters sent out in answer to letters sent to the Commissioners by Mr. Watson? A. I could not determine that without having all the records here.

Q. But it is not the custom of the Commissioners to send letters unless they are answering inquiries, is it?

Mr. PETER: Objected to as leading.

A. Ordinarily not. Perhaps I ought to qualify that. Only one of those letters is an original. It is the custom of my office to sign the original letter of a series, and that is copied in my press-book; the rest I use my stamp for. Two of them are copies, I used my stamp on.

Q. Now, Doctor, I want you to tell me where they are from—first of all, answer that question. A. Well, apparently this No. 5 is a copy of a letter—one of a series that I signed by stamp. No. 6 is an original. I stamped that, but it is an original; that is my

signature, the same as if I had written it. No. 7 is the original which I have signed, because there is only one letter in that series.

— Now, where are they from? You have not answered the question who sent them—where are they from? A. Apparently from the office of the Commissioners of the District of Columbia.

70 Q. Is No. 5 a correct copy—you compared it, did you?

A. I believe it is.

Q. You compared it with the original before you sent it out—did you not? A. Oh, it had to be like the original, because we copy the sets together. One of the copies is the original, and we press them right through on the other. It is manifolded.

Mr. PETER: Well, I object to the No. 5, because it is a copy. I object to 5 and 6 because they relate to proceedings—to matters between the plaintiff and the District of Columbia, and are not connected with the defendant. That No. 5 purports to relate to a confirmation by the Commissioners of their acceptance of an alley, when there has been no proof of any donation of an alley, nor any proof of any prior acceptance on their part, which would warrant a confirmation. No. 6, because it purports to give information in reference to a survey made by the Engineer Department, when the survey itself is the best evidence of the same.

Q. There is one question more that I ought to have asked the Doctor, but I don't know whether he can answer that or not, without looking at his records. I ought to have asked whether or not a similar letter was not sent to Mr. Carver, as shown by Exhibit No. 6?

Mr. PETER: I object to that, because the letter itself would be the best evidence, and because the witness has not indicated his personal knowledge of the sending, that is of the mailing of the letters in question. Objected to also as leading in that shape.

71 A. I could not tell, as this letter was not copied in my office. It was copied in the Engineer Department.

WILLIAM TINDALL.

Subscribed before me this 12th day of May, 1905.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon RICHARD R. VALENTINE, called as a witness on the part of the complainant, and being first duly sworn, was examined and testified as follows:

Mr. STEWART: I desire to say that, in the order of proof, this witness should have preceded Dr. Tindall, but, owing to the fact that Dr. Tindall was anxious to get away, I put him on first in order that he might go.

Redirect examination.

By Mr. STEWART:

Q. Now, Mr. Valentine, I show you Exhibit No. 1. Please look at that and state what it is. A. This is a copy of the records of our office of a survey of lots on L and Canal Streets, No-. 32, 33 and 34.

Q. What else does it show?

Mr. PETER: Objected to, because the plat is the best evidence of what it shows.

A. What do you want, the dimensions of it?

72 Q. Yes. A. Well, lot 32 is seventeen feet wide, and sixty-six feet deep, with a five-foot alley in the rear; its area is 1122 feet. Lot 33 is 16 feet wide, 66 feet deep, 10 feet 6 area. Lot 34 is 16 feet wide, 66 feet deep, and the area is 1056 feet. Now, this five-foot alley abuts those three lots.

Q. When was that survey made? A. June 8th, 1904.

Q. When was the subdivision made? A. The subdivision was made July 7th, 1897. The subdivision and the survey are two different things.

Q. Just explain that, so it will appear all right on the record. It is a subdivision of what lots? A. A subdivision of lots 32, 33 and 34, of Square 882.

Q. Well, what original lot is it a subdivision of? A. Original lot 14.

Q. Into several lots? A. Into several lots, 32, 33 and 34.

Q. And who made that subdivision? A. Mr. M. P. Caldwell.

Q. Now I show you Exhibit No. 2. A. Yes, sir.

Q. Now, please look at that and tell us what that is? A. This is a copy of the subdivision of the same lots. I will state, though, there are some errors attached to this paper I have now. (Referring to Exhibit No. 2.)

Q. Where are the errors? A. In this alley.

73 Q. Just state what they are. A. This is a survey of the very same square, 882, of lot 14, and subdivided into three lots, 32, 33 and 34.

Q. Now, was that plat recorded in your records over there? A. This is a copy of the plat recorded in our records.

Q. Now, what is this one here (indicating)? A. That is a copy.

Q. Well, read those words up there. A. (Reading:) It is ordered, the Surveyor of the District of Columbia will admit this subdivision or plat to record at his office under the Act of Congress approved August 27th, 1888. (Signed:) John W. Ross, John B. Wight and W. M. Black, Commissioners of the District of Columbia.

Q. Coming from the District Commissioners, what does that mean to the Surveyor?

Mr. PETER: I object to the interpretation or meaning.

Q. Well, what does your office do when you get that? A. We do not admit these plats to record until we get such orders to admit them.

Mr. PETER: I object to those words that the witness has last purported to quote, on the ground that this purports to be a copy of a copy of an order of the District Commissioners, and, secondly, that if any such order was made, it could have no effect upon the rights of the defendant.

Q. Now, at that time the order came to the Surveyor, was or was

not that plat on the records of the Surveyor's Office? A.
74 Well, that I cannot say. In those years the office was run quite different from what it is at the present time.

Q. Well, does that show that that is recorded in any book—anything on that paper to show it? A. No, there is nothing to show that it is recorded in that book.

Q. Who brought that paper into the Surveyor's Office, as it appears from the paper itself?

Mr. PETER: I object to the interpretation of the witness.

A. Why, you brought this paper yourself. You mean the original?

Q. I mean the original. Of course I mean the original. A. I presume Mr. Caldwell was the man who should have ordered this subdivision.

Mr. PETER: I object to the presumption of the witness.

Mr. STEWART: Well, I guess I will have to see the Surveyor again, Mr. Examiner, because I don't think Mr. Valentine is fully conversant with the records over there.

By Mr. PETER:

Q. Mr. Valentine, this writing on Exhibit No. 2——

Mr. STEWART: I object to talking with the witness about something on Exhibit No. 2, when he does not know what Exhibit No. 2 is.

Q. (Continuing:) "Proposed alley five feet width," is that a true copy—does that appear upon the original of which this pur-
75 ports to be a copy? A. This is a copy of the survey.

Q. Well, one moment. I asked, 'This No. 2 purports to be a copy of something, doesn't it? A. Yes, sir.

Q. Are those words "proposed alley five feet in width" upon that of which this purports to be a copy in the place of where it appears on this copy? A. Yes, sir.

By Mr. STEWART:

Q. Now, when those words "proposed" etc. are written on a paper brought into the office, what ordinarily do they mean in the office?

Mr. PETER: I object to the witness giving any interpretation of the words. The words are plain enough upon their face.

A. It means that it is proposed to be a public alley.

Q. When a paper of that kind is presented to the office and the order of the Commissioners is written on it, as it is on the margin here, what does the office then do? A. It is admitted to our records. It is printed in our books—kept a matter of record.

Q. Now, when was that first submitted to the office?

Mr. PETER: Objected to as proper in chief, and as asking for the witness to give information which he must necessarily have derived from the copy of a copy.

A. May 22nd, 1897.

Mr. STEWART: Now I am going to offer in evidence Exhibits Nos. 1 and 2, and I reserve the right at the hearing to have the original of Exhibit No. 2 at the hearing, and also of No. 1. No. 1 is also a certified copy anyway.

76 The WITNESS: Excuse me. This copy signed by H. B. Looker is a copy——

Mr. PETER: I object to that unless a question is asked the witness.

Mr. STEWART: (To the witness:) I say the witness desires to say something about Exhibit No. 1. What further would you like to say about Exhibit No. 1?

The WITNESS: I only want to state that this exhibit signed by Captain Looker and dated June 8th, 1904, is a true and absolute copy of what is in our office.

Cross-examination.

By Mr. PETER:

Q. Now, Mr. Valentine, you say when a person writes on the plat "proposed alley," that that necessarily means that they are proposing a public alley? A. Well, the Commissioners of the District of Columbia have a right to open or close the alley, as they please by condemnation proceedings. This alley belongs to the District of Columbia, and it is proposed to be a public alley by taking off five feet of these other lots and making a ten-foot alley.

Q. You mean that the proposition there made is that if the District can get five feet from the adjoining lot, that they would then make up a public alley?

Mr. STEWART: I object. The witness did not make any statement of the kind, but that if the District could get five feet for a public alley, and I further object to the counsel putting words in the witness' mouth.

77 A. I state that as this is a five-foot alley—proposed five-foot alley, that another proposed five foot would come off this land abutting this five-foot alley.

Q. You don't put yourself forward as an expert on alleys, do you, Mr. Valentine? A. No, sir, I do not.

Q. You don't purport to know what the laws of the District of Columbia governing alleys are? A. No, sir.

Q. You were not an employé of the office at the time that this plat was submitted there, were you? A. No, sir.

Q. You don't know what "proposed" may have meant in that day? A. No, sir.

Q. And what you mean to testify to is that in your opinion——

Mr. STEWART: I object to counsel putting words in the mouth of the witness.

Mr. PETER: Well, if you knew that counsel could ask a leading question under cross-examination, you would not make it appear so foolish.

Mr. STEWART: I know that perfectly well, but I know counsel can't put words in the mouth of the witness. That is perfectly right enough.

Mr. PETER: You should not make your ignorance of the law so apparent on the record.

By Mr. PETER:

Q. You mean to testify simply, Mr. Valentine, that, in your judgment, those words mean that the party proposed to give five feet for a public alley, provided the party adjoining, the abutting lots, 78 would give five feet toward a public alley, so as to make an alley of the width of ten feet. A. Well, Mr. Attorney, from the appearance of this plat, there is already a five-foot alley there belonging to the District of Columbia. In order to get the other five feet they have got to get it by condemnation proceedings.

Q. Well, does not that mean that the man who is giving five feet gives it provided the District will get an additional five feet in order to make a public alley? A. Yes, sir.

Q. You do know that the public alleys of the District of Columbia are not less than ten feet in width? A. Yes, sir.

Q. And that the District of Columbia does not open alleys as public alleys unless they are ten feet in width? A. Yes, sir.

Redirect examination.

By Mr. STEWART:

Q. How do you know, Mr. Valentine, that when the District accepts a five-foot alley, that it means that somebody else must give five feet more to make a ten-foot alley? A. Well, the supposition is that those parties have already donated their five feet, or given it by condemnation proceedings, and these other persons building on these alleys must do likewise.

Q. And your answer, then, rests on supposition? A. Certainly. I can't say otherwise.

79 Q. When a man wanted to subdivide an alley in 1897, lot what was the custom of the office?

Mr. PETER: I object to this.

A. I could not tell you, sir.

Q. Did not they have some rule or regulation governing that?

A. I know nothing about that at all.

Q. You have no copies of any rules in force about subdivisions at that time? A. Yes, we have a copy of the regular fees charged to parties having work done for the District, dated March 23rd, 1885. That rule has been in effect up to and including December 31st, 1904.

Q. I call your attention to rule No. 12——

Mr. PETER: I object to any questions being propounded to the witness in reference to such rule, because they have no applicability whatsoever to the matter in dispute.

Q. Read the 12th rule there. A. The 12th—(Reading:) "No work will be begun by a surveyor for any private parties until the actual estimated cost of the same has been deposited with the Col-

lector of Taxes, D. C., and his receipt recorded in the office of the Surveyor, D. C."

Q. That rule was in force, then, when the original of Exhibit No. 2 came into the Surveyor's Office? A. Yes, sir.

Mr. PETER: I object to the question, because the rule in question is irrelevant, because the witness was not an official of the office at that time, and because the witness is asked to orally testify as to a written rule.

Q. How long have you been in the office, Mr. Valentine—
80 in the Surveyor's Office? A. Since October 13th, 1904.

Q. That is the schedule of fees that belongs in the Surveyor's Office? A. Yes, sir.

RICHARD R. VALENTINE.

Subscribed before me this 21st day of April, 1905.

J. ARTHUR LYNHAM, *Examiner*.

(At this point an adjournment was taken until further notice.)

WEDNESDAY, *March 29th*, 1905—2 o'clock p. m.

Met, pursuant to notice, to resume the taking of testimony on the part of the complainant.

Present: Joseph L. Stewart, Esq., Solicitor for the complainant, and Arthur Peter, Esq., Solicitor for the defendant.

Whereupon—RICHARD R. VALENTINE, having been heretofore duly sworn, was recalled and further interrogated.

Direct examination.

By Mr. STEWART:

81 Q. Mr. Valentine, I want to show you Exhibit No. 2, and ask you to state fully just what that exhibit implies. (Handing witness Exhibit No. 2.)

Mr. PETER: Objected to, as the matter has been fully gone into, and it is not proper by way of redirect examination.

A. It is a copy of a subdivision among the plats there in the office, square 882.

By Mr. PETER:

Q. Did you make the copy?

Mr. STEWART: Now, wait——

Mr. PETER: I don't wait, because this is the proper time to get my objection in, if he didn't.

Q. (Continuing:) Did you make the copy? A. No, sir, I did not.

Mr. PETER: Objected to, on the ground that the copy was not prepared by the witness, and he is not testifying to mere recollection without the aid of the original.

By Mr. STEWART:

Q. State whether or not you compared that with the original, Mr. Valentine, before it came out? A. Mr. Forsyth and myself compared this with the original before it was attached to these papers. I don't know whether this paper was attached to these papers at that time or not. I can't speak accurately about that. This is a paper that was compared by Mr. Forsyth and myself from the records there, and the necessary changes were made on there by Mr. Forsyth.

Q. Now, you will see, Mr. Valentine, that has the name of "Caldwell" signed there? A. Yes, sir.

Mr. PETER: Objected to, because there is no appearance of a signature whatsoever, but a mere typewritten name. Ob-
82 jected to as leading.

Mr. STEWART: That only purports to be a copy, Mr. Peter, that is all.

By Mr. STEWART:

Q. Now, state what action, Mr. Valentine, the office takes upon receiving a paper of that kind, that is, an original paper of that kind?

Mr. PETER: Objected to, because the witness testified that he was not an employee of the office when that paper was obtained.

Q. (Continuing:) Just go ahead and state. Mr. Peter can object, of course. A. These subdivisions are ordered by the owners or the trustees of an estate, and before they are entered upon the records in our office, they are ordered by the Commissioners—in other words, they grant us the privilege of—they go to the Commissioners for their approval and then they come back—after they are approved they come back and are entered on our records.

Mr. STEWART: That is all.

Mr. PETER: I have no cross-examination.

By Mr. STEWART:

Q. I might ask you to look at Exhibit No. 1—I think you testified to that before; I won't ask you any questions about that, unless you desire to say something about that. You might just say what Exhibit No. 1 is?

Mr. PETER: Objected to, on the ground that counsel has already stated that he had fully examined the witness in respect thereto.

83 Mr. STEWART: I think he has testified to that. I would not be positive about it. I don't know just whether or not he told us what that was at the last session; I think he did, however. I am not positive about it. To make certain I just simply call his attention to it again.

A. This is a plat——

By Mr. PETER:

Q. Did you make that? A. No, sir.

Mr. PETER: Objected to also on the ground that it was not made by the witness, and does not appear to be an original.

A. (Continuing:) This is the original. This is an original plat of the survey of lots 32, 33 and 34 on L street South and Canal Street West, I think.

Cross-examination.

By Mr. PETER:

Q. Do I understand you to mean that the original plat has been removed from the records and brought here? A. No, sir; this plat is made and transferred to our records, and the two are signed together, one in a book and one is this letter which goes to the owner of the property.

Q. Do you mean to say that this is an original in the sense that Mr. Caldwell ever executed it? A. This is the original survey of these lots 32, 33 and 34.

Q. Don't you see there that it purports to be a copy of
84 Mr. Caldwell's signature? A. I can't help that. It is one of the original plats of our office.

Q. You mean by that it is a copy of a plat in your office? A. Well, you can say a copy of a plat or plat itself, because whether this is made from the original or from other papers there, or *vice versa*, I can't say; but these things are taken from the books.

Mr. PETER: Objected to as not the original, or even a copy of an original.

Re-direct examination.

By Mr. STEWART:

Q. Mr. Valentine, please explain your last answer more fully.

Mr. PETER: Objected to because the counsel has announced two or three times he was through with the witness. The witness has already been asked by the Examiner if he meant his last answer, and he said he did, and had it read to him.

A. Well, these surveys are made from papers drawn up from plats in the office, and these lots, as they are surveyed, are put in these plats, and from that survey these surveys are transferred to a survey book, and these plats are made from the survey book, and *vice versa*. Sometimes they follow these survey papers, and they are transferred into the survey book, and *vice versa*. There is no stipulated rule for doing that at all. All those things are verified before they leave there.

RICHARD R. VALENTINE.

Thereupon JOSEPH H. STEWART, being first duly sworn, testified as follows:

I want to say regarding Exhibits Nos. 3, 4 and 8 that they are copies of deeds recorded among the Land Records of the District of Columbia, in the Libers and folios designated on each; that Exhibits Nos. 3 and 8 are in my handwriting. I copied them from the record and compared them with the record, and Exhibit No. 4 has also been compared, and they are copies of the deeds that are recorded among the Land Records of the District of Columbia, and I offer them in evidence on behalf of the complainant.

Cross-examination.

By Mr. PETER:

Q. Who typewrote No. 4? A. Now, I am uncertain whether I typewrote it myself, or whether I had my young man to typewrite it. I would not like to say positively, but I compared it after it was typewritten with the record.

Q. And you make oath that every word contained in any of the said Exhibits heretofore referred to by you is identical with the record in the office of Recorder of Deeds of the District of
86 Columbia? A. I did my utmost to make every word in those papers compare with each word as shown by the record.

Q. I didn't ask you that question. A. And I compared it and I believe that it is an exact copy, word for word.

Q. Then, you are testifying upon belief and not upon knowledge? A. Well, upon the knowledge that I used in executing these papers, I think they are exact copies.

Q. Then, you are testifying from what you think and not from what you know? A. Well, I know from my comparison that they are copies.

Q. And you are ready, then, to swear positively that they are identical with the records in the office of the Recorder of Deeds? A. Yes.

Mr. PETER: Now, I want to reserve the right to have the Recorder of Deeds' Libers and folios referred to at the hearing of this cause.

JOSEPH H. STEWART.

Subscribed before me this 10th day of May, 1905.

J. ARTHUR LYNHAM, *Examiner*.

87 Thereupon ROBERT T. FRANK, called as a witness on the part of the complainant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. STEWART:

Q. How are you employed? A. Employed in Doctor Tindall's office, the executive offices of the District of Columbia.

Q. I hand you this paper, and I ask you whose signature is

signed to that—whose handwriting? A. That is Doctor William Tindall's signature.

Q. State whether or not you have seen Doctor Tindall write? A. I did not.

Q. I mean have you seen him write at different times? A. Yes.

Q. And you know his writing? A. Yes.

Q. Didn't he send you down stairs when I was over there? A. No, he sent Mr. Randall.

Q. Is that a copy of the records in the office of the Commissioners? A. I won't say as to that, because I don't know anything about it.

88 Q. Whose handwriting is that down there—all that writing? A. Doctor Tindall's.

Q. When the words "official copy" is written on paper like that what does it mean? A. Why that means, as far as I know, that that is a fac simile of the official letter which was signed by Doctor Tindall.

Q. That was a record in the office? A. Yes.

Mr. STEWART: I offer it in evidence.

Mr. PETER (to Mr. Stewart): For what purpose?

Mr. STEWART: I offer it for the purpose of showing that a notice was sent to Mr. Howard M. Carver by the Commissioners of the District of Columbia, notifying him that he was occupying land belonging to the public, and that he vacate the same.

Mr. PETER: Objected to as not being the best evidence thereof, and not indicating that any such communication was sent to Mr. Carver.

(The paper referred to is filed by the Examiner, marked Exhibit R. T. F. 1.)

Subscribed before me this — day of — —, 1905.

———, *Examiner.*

(The taking of testimony on the part of the complainant was here announced as closed.)

89

EXHIBIT R. T. F. 1.

(Copy.)

APRIL 13, 1903.

Howard M. Carver, 601 L St. S. E.

SIR: A survey made by the Engineer Department discovers an encroachment on public space from lot 32, Square 882, of which the records show that you are the owner, said encroachment consisting of a fence and shed enclosing the public alley to the extent of Five feet. In order that the right of the unobstructed use of said alley may not be interfered with you are requested to have said fence and shed moved to proper line within 10 days.

Failure to comply with this notice will necessitate legal action on the part of the District.

By order of the Commissioners, District of Columbia.

(Signed)

WILLIAM TINDALL, *Secretary.*

J. H. R. Official Copy

WILLIAM TINDALL,
*Secretary to the Board of Commissioners of
the District of Columbia.*

Defendant's Testimony.

Filed May 25, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 24742.

LEWIS L. WATSON

vs.

HOWARD M. CARVER.

WASHINGTON, D. C., April 25, 1905—Tuesday,
at 3 o'clock p. m.

Met, pursuant to notice, to take testimony on the part of the defendant in the above entitled cause.

Present: Joseph H. Stewart, Esq., Solicitor for the complainant; Arthur Peter, Esq., Solicitor for the defendant, and the complainant and defendant in proper person.

Whereupon HENRY WILLIAMS, called as a witness on the part of the defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. PETER:

Q. Mr. Williams, what is your occupation? A. Carpenter.

Q. Where do you reside? A. 331 First street, Northeast.

Q. Do you know premises No. 601 L street, Southeast, in
91 this city? A. Yes, sir.

Q. Did you ever have anything to do with those premises?
A. Yes, sir.

Q. What? A. I worked on them.

Q. What did you do? A. I taken the houses from under roof
and finished them. Completed them for so much money.

Q. For whom? A. For Mr. Achison.

Q. What is Mr. Achison's first name? A. I think it is E. I.

Q. Eugene? A. Yes, sir.

Q. What was put upon the rear of the lot? A. There was one

stable, two sheds and two gates. Two single gates and one double gate for the stable.

Q. How many houses were built on this lot? A. Three.

Q. Which house is 601 L street? A. It is right on the corner.

Q. Is it at the Eastern or Western end of the lot? A. Eastern end. East side of the street.

Q. Well, isn't it on the Western end of the lot? A. The Western end of the lot, but I thought you meant the side of the street. It is the East side of Sixth street, the Western end of the lot.

92 Q. And the stable that you speak about was put at the rear of which house? A. To the corner house. The West end.

Q. And by the "corner house" you mean what numbered house? A. Well, I don't know the number now.

Q. Have you been down there recently? A. I was there this morning.

Q. Do you know which house Mr. Carver owns there? A. He owns the corner house; the West end.

Q. Now, who built the stable to the rear of Mr. Carver's house? A. I did.

Q. Who built the two sheds which you speak of? A. I did.

Q. How far did that stable that you built extend on the lot upon which Mr. Carver's house is? A. It extended all the way across the lot; the full width of the lot.

Q. And, then, what came after that on the rear line of the original lot? A. The next lot?

Q. Yes. A. A gate came next.

Q. Then what? A. A shed; a small shed.

Q. Well, was there any fence there? A. Well, I could not exactly tell now how far the shed was from the stable, but the gate—

93 I think there was one door and the gate, and then about three feet from the shed the gate was—about five feet, I suppose, East between the stable and the shed, or six feet. I could not exactly tell.

Q. Then, what came? A. That was a shed.

Q. Then, after that shed, what came? A. Another gate for the third house.

Q. Then, was there any fence then? A. A little fence. A little space and then another shed.

Q. How did you come to build that stable and those sheds and that fence and those gates where you did? A. How did I come to build them?

Q. Yes, where you did? A. I came to build them because Mr. Achison got me to build them.

Q. What made you put them where you did? A. According to his directions.

Q. Whose directions? A. Mr. Achison's.

Cross-examination.

By Mr. STEWART:

Q. What did you say your occupation was? A. Carpenter.

Q. Were you the boss carpenter in charge of these houses at the time? A. I was no boss carpenter. I am a journeyman
94 carpenter, but I took the work from him when the roofs was on them.

Q. Were you a journeyman carpenter at that time? A. Yes, sir.

Q. Who was the carpenter in charge if the work? A. The carpenter before I went there?

Q. The carpenter in charge of the work in putting up these houses? A. I was the one after they were under roof.

Q. Well, who had them up to the time they were put under roof? A. I don't know.

Q. Who put the trimmings in the houses? A. I did.

Q. When did Mr. Achison give you directions about erecting the sheds, fences and gates? A. When he gave it to me, I could not specify the time, but just before I done them he gave me the directions.

Q. When was that—before the roof was on or after? A. Oh, no; the houses was got ready for plastering pretty near before I put them fences up. While they were doing the plastering I was putting the fences up.

Q. Well, how long before that was it that he gave you directions about putting these up? A. When I went to do it; just as I went to do the work. When I went there he gave me the lines, when I started.

95 Q. When was that time? That is what I am trying to get at. When was that time? A. I could not specify the time. I don't want to swear wrong.

Q. What year were those houses built in? A. It has been about six or seven years ago according about as near as I can get at it. Near seven years.

Q. Was it in the summer or winter? A. It was in the winter. It was in April before they were finished.

Q. When did Mr. Carver move in there? A. I could not tell you that. I was not there. The houses were completed and I had left them and turned them over to Achison.

Q. Were you acquainted with Mr. Achison before this? A. I have been knowing him for years.

Q. For how long? A. I have been knowing him for forty years.

Q. Is Mr. Achison a carpenter too? A. No, sir.

Q. Had you ever worked for him before? A. Yes, sir.

Q. Have you worked for him since you put up these houses? A. Oh, yes; I have built several houses for him since I built them.

Built some out in Chicago street for him.

96 Q. What did he say to you when he gave you directions about putting up the sheds and fences? A. Told me to go down there and build them sheds and fences and he would be down

there, and he came down and gave me the directions and I drew my lines to work under.

Q. What kind of directions were they? A. He gave me directions. He measured it off in pegs.

Q. You say he measured it, or you measured it? A. Both of us measured it.

Q. Both of you measured it? A. Oh, yes.

Q. Then, what did you do after that? A. Put the work up.

Q. What did Mr. Achison do after that? A. He didn't do anything that I know of. He was not a working.

Q. He left you to complete it, didn't he? A. Why certainly.

Q. And you completed it? A. That is what I did.

Q. Did you measure it any more after that date? A. Measured it any more?

Q. Yes. A. No, I didn't have to measure it. After I had got my lines and dug my holes.

Q. You drove your pegs down that day and commenced
97 to work according to that? A. Started the houses.

Q. From what place did you commence to build? A. From the corner.

Q. On which corner? A. Corner of Sixth street, I think it is. I commenced from the front part of the house and measured back. That is the way we measured.

Q. Was that the only way you measured? A. That is the only way I think we could measure it, as we did. He helped to measure it too?

Q. Well, you helped to measure it? A. Certainly, I helped to measure it.

Q. That is the only measurement you took? A. Yes.

Q. How long have you been knowing Mr. Carver? A. Well, I only knew Mr. Carver to meet him once or twice that I know of.

Q. How did you find out about this? A. Well, he found out from a man who did the brickwork who did the carpenter's work, and he knew me, Mr. Sorrell, and Mr. Sorrell sent him to me.

Q. Do you know the other people to whom he sold those houses? A. I do not.

Redirect examination.

By Mr. PETER:

Q. Did Mr. Achison come down there any more after the day when you and he measured the lines? Q. Oh, yes, he was there off and on until the buildings were completed, you know. The
98 sheds were completed before they had them all plastered and he was there all the time.

Q. You went down there to-day at Mr. Carver's request to look at the property? A. No, not to look at the property. I went there to tell him I didn't think that I could get here to-day. That is what I went there this morning for. I didn't know whether I could get a man in my place or not, and the work that I was on, I had to—it has got to be completed, you know, and I had to see the boss, and he told me to see another man and put him in my place. That is what

brought me down there this morning. I thought I would see Mr. Carver and tell him.

Recross examination.

By Mr. STEWART:

Q. Well, when Mr. Achison would visit that place, after you had erected the sheds, what did he do when he came down there?
A. What did he do?

Q. Yes, on these times? A. Oh, he came down there on business, to order stuff for trimming, and he was superintending the work you know. It was his houses and he superintended all the work. He was down there every day, probably, once a day.

Q. Just tell me what he did when he came down there? A. Well, walked around and asked me what was needed, and
99 if I wanted any nails and wanted any trimming, or whatever was needed.

Q. To see if you needed any supplies? A. Yes.

Q. Were these fences built before or after the sheds? A. Oh, the fences and sheds were all built together at the same time. It was one job.

Q. And you were doing this while they were plastering the houses, as I understand you? A. While they were lathing and plastering the houses I was putting up the sheds and fences. I always do that. Cold weather, you know, they leave the outside work until they do the inside work first, in bad weather.

Mr. STEWART: I want to object to this witness' testimony as being incompetent and immaterial; the entire testimony.

Subscribed before me this — day of —, 1905.

—, *Examiner*.

Thereupon—HOWARD M. CARVER, the defendant and a witness in his own behalf, being first duly sworn, was examined and testified as follows:

100 Direct examination.

By Mr. PETER:

Q. You are the defendant, are you, Mr. Carver? A. Yes, sir.

Q. Who is at present the owner of premises 601 L street, Southeast, in this city? A. At the present time?

Q. Yes. A. I am, Howard M. Carver.

Q. From whom did you buy them? A. Eugene Achison.

Q. When did you buy them? A. In what year?

Q. Yes. A. Why, let me see. Why, seven years ago last fall; going on eight years ago now.

Q. Had you ever seen the property before you bought it? A. Yes, sir, I was there when they dug out for the foundation.

Q. How did you come to be there? A. Why, my wife's uncle, he was the contractor and bricklayer he done the brickwork, and he

advised me to buy the house, and he got me to go down and look, and he advised me to buy the corner house.

Q. How long after it was completed before you purchased? A. I made a deposit on it when they dug for the foundation, to bind the bargain.

101 Q. Who was then the owner of the two houses immediately to the East of you? A. Adjoining me?

Q. Yes. A. Mr. Achison.

Q. Who lives now in the house adjoining you to the East? A. Mr. Watson lives in one and Mr. Booze, I believe, in the other.

Q. I ask you now of the house adjoining you, now. Two houses can't adjoin you? A. Mr. Watson.

Q. How long after you purchased your property did Mr. Watson purchase his? A. Why, I could not exactly tell you, but I think it has been about three years afterwards, between three and four years.

Q. How was your lot improved when you bought it? A. Why, what do you mean by the——

Q. What improvements were there upon it? A. It was one big shed, big enough for a horse and wagon; that was put there for an inducement for to buy mine at the time I bought it.

Q. Well, there must have been something other than a shed on your lot, wasn't there? A. No, it was a big shed that covered the whole width of the back lot. That was big enough for the horse and wagon, and he built that for inducement to buy.

Q. I didn't ask you, Mr. Carver, what was on the rear line of your lot. I asked you what improvements were upon your lot
102 when you bought it? A. One brick house. You mean when I purchased it at the first—paid the deposit on it?

Q. No. Well, when you paid your deposit money, and when you afterwards got your deed for it, what was on it? A. Why one brick two story.

Q. And where was that situated? A. That was on the corner of Sixth and L street-, Southeast.

Q. Now, was there anything else on the lot? A. There was not anything else; only those sheds at the time.

Q. Now, what shed was on your lot? A. The big one that covered the whole rear across the back. That was built, as I say, for inducement for me to buy. A place to keep my horse and wagon.

Q. What was your business at that time? A. Produce dealer.

Q. How do you sell your produce? A. Going around the street. Pay a license.

Q. Do you walk around the street? A. No, sir, with my horse and wagon.

Q. What was your business at that time? A. Produce dealer.

Q. How were you then selling your produce? A. The same way.

Q. When you purchased this property what did you believe to be the boundaries of your lot? A. I don't understand.

Q. When you purchased the property in question how did
103 you know how far it extended? A. Well, it was built before I moved in. They built it as it was and I bought it as it stood.

Q. What did you think bounded your lot on the rear? A. Why, not anything at the present time.

Q. When you bought it what did you think determined how far your lot went back? A. Why, only by the length of where the yard ran back; to where the sheds are standing at the present time.

Q. Now, I want to try and see if you can understand what this question means. When you bought that lot, what did you think was on the Southern limit of your lot?

Mr. STEWART: That is objected to as incompetent.

A. What do you mean, on my lot?

Q. What did you think was on the Southern boundary of your lot when you bought it? A. What was back of my lot?

Q. Yes. A. Why, there was not anything, only a vacant lot; there was a vacancy.

Mr. STEWART: I object to the question.

Q. When you bought the lot, where did you think the stable was that was upon it—on that lot or some other lot? A. It was on my own lot.

Mr. STEWART: Same objection. 'I don't want to repeat it all the time.

Q. Did you think that any part of that stable was on any other lot? A. No, sir, I did not.

104 Mr. STEWART: Objected to as leading, in addition to the incompetency.

Q. State whether or not you thought that any part of it was upon an alley? A. No, sir, I did not.

Mr. STEWART: Objected to as leading and incompetent.

Q. State whether or not, since you have known the property in question, there has ever been an alley to the rear thereof? A. No, sir, it has not.

Mr. STEWART: Same objection.

Q. How does the stable now stand in reference to where it stood when you bought it? A. Why, it stands just exactly on the spot, only the door is changed on the side. I am on the corner.

Q. State what, if any, improvements you have made to the stable? A. Not any at all, only excepting changing that door, and the drive-way across the pavement to get in.

Q. How much did that cost you? A. I deposited \$13 in the District Building to get that put down. When they put down the side pavement and curbing.

Q. When did you first know that there was any claim that your stable was upon an alley? A. Why not until the District notified me to move in. To move my shed and iron fence off the claim of five foot alley.

Q. When was that? A. That was last year, I think, if I am not mistaken.

105 Q. What abuts on your stable to the South of it at present?

A. One brick dwelling.

Q. How close does that dwelling come to your stable? A. Right up against it. If anything it is four and a half inches of it is on my ground, off the party wall.

Q. How long ago was that house built? A. That house has been built about five years ago, going on six, I suppose. Between five and six years.

Q. Mr. Achison testified that he told you before you bought the property that there was a five foot alley there. State whether or not that is true? A. He claimed that it was a ten foot alley back, if the other party would give five foot, but if neither one didn't give the five foot there would be no alley there.

Q. And where was that alley in reference to where the stable then was? A. I don't understand that.

Q. Where did he claim the alley would be if somebody else would give five feet towards it? A. Why, in the rear of these three houses; would run back in the rear of these three houses.

Q. Well, how in reference to the stable? A. Well, that was not mentioned.

Q. Well, was the stable on the alley? A. I don't know whether it was or not.

Q. Well, at that time, where did you think the alley was in reference to the stable? A. Back of me.

106 Q. I didn't say in reference to you. I said in reference to the stable. A. Why, in the back of it; that — if it was any.

Q. Well, what do you mean by back of the stable? A. Why, if it was any alley it was to come in right back of the shed, right along up the side, just like that was the wall and here in the alley here. (Indicating.)

Q. Any part of the stable on the alley? A. No, no part at all.

Q. Did Mr. Achison tell you anything from which you could infer that the stable was on any part of the alley? A. He did not.

Cross-examination.

By Mr. STEWART:

Q. Mr. Carver, when you bought this house, who looked after the papers for you? A. Why R. E. Bradley had a deed of trust on it for \$1,000.

Q. I don't mean that. I mean did you have a lawyer to look after the papers for you? A. I didn't expect it was necessary.

Q. And did Bradley look after that for you? A. R. E. Bradley had a deed of trust on it for \$1,000, and he said his deed of trust was security enough for a clear title to it.

Q. And what did he tell you about it? A. He told me he had a deed of trust on it for \$1,000, and it was not necessary for me to get an abstract of title.

107 Q. What did he say to you about the lot—about the property? A. Why, it was all clear.

Q. Well, did he talk about the dimensions of it? A. No, he did not.

Q. Did he tell you you were getting a good bargain? A. Why, he didn't say anything about the bargain, at all, then.

Q. Well, didn't he say something else to you, besides telling you that the title was clear? A. No, nothing at all.

Q. That is the only thing he said; the title was clear? A. That was all.

Q. Then, you bought subject to his deed of trust of \$1,000? A. Yes.

Q. Who made out the deed for you? A. Why Mr. Achison and Mr.—his partner. I forget his name at present. Folkes, I believe, at the present time.

By Mr. PETER:

Q. What Mr. Achison? A. Eugene Achison.

By Mr. STEWART:

Q. Who recorded the deed for you? A. Why, I recorded it myself.

Q. When did you record it? A. I could not tell you at the present time.

Q. When did you close up the negotiation? A. Why, 108 with R. E. Bradley, you mean?

Q. No. With Mr. Achison? A. I closed with him in two years afterwards, I think, if I am not mistaken.

Q. Then, you had the property two years before you had your deed for it, is that the idea? A. Why, a deed from Mr. Achison, yes.

Q. Had it two years before you got your deed? A. Yes.

Q. You made your deposit when the trenches were dug for the foundation? A. I did.

Q. Did you ask somebody at that time how deep your lot was, and whether or not you had an alley at the rear? A. I did not, because I was on the corner.

Q. It didn't matter whether you had an alley or not, did it? A. It didn't matter whether I had any alley or not.

Q. How long was it after you made your deposit before you got in the house? A. Why, I made my deposit in—I don't know exactly what month, but it was sometime during the early part of the fall, and I moved in the house in April following.

Q. The side of your shed, was there a stable door to it? A. It was put on the back when first built.

Q. It is put there so that you could drive out on the alley? A. Drive right out on the lot. I don't know whether there is any alley or not there.

109 Q. On the vacant lot at that time? A. Yes.

Q. Who was living in the adjoining house at that time when you moved in? A. There was no one. I was the first one that moved there.

Q. The other house was vacant? A. The other house was vacant.

Q. How long was it before somebody had moved into it? A. After I moved there.

Q. After you moved there? A. Why, I suppose about two months.

Q. Who was it—was it Mr. Watson? A. No, it was some white gentleman, but I don't know who it was.

Q. Your stable is not as large now as when it was first built? A. Yes, sir, it is as large now as it was when it was built, all excepting four inches and one-half.

Q. Four and a half inches smaller? A. Yes, sir.

Q. You told Mr. Achison to build that stable there for you? A. He said he would build it for inducement for me to buy it, so I could keep my horse and wagon there.

Q. Did you tell him where you wanted it built? A. I did not.

Q. That money that you deposited at the District Building, that \$13.00, you got that back, did you not? A. I got back part of it.

110 Q. Why didn't you get it all? A. Because they charged expenses for putting it down.

Q. What did you do when they notified you that you were on the five foot alley? A. I didn't pay any heed to them whatever.

Q. I believe they had you in the Police Court, didn't they? A. Yes.

Q. What was the result of it? A. Why, I won the case.

Q. You won out? A. Yes.

Q. Were you there while the sheds were being erected? A. No, sir, I was not.

Q. How often did you go down there, anyway, while they were building that house? A. About once every day.

Q. You saw the sheds going up then? A. No, I didn't see them when they were going up, because I would never go down until after the working hours were over; and the carpenters were all gone.

Q. Well, if you were down there once every day, why wasn't it that you didn't see them while they were going up? A. Why they put them up in one day, part of them.

Q. Well, you were there when they were going up? A. No, because they was not working on them at the time.

Q. Well, you were there before they were completed? A. 111 Oh, yes.

Q. You knew about it——

Mr. PETER: You misunderstand each other. Ask him what he means by "going up" and you will see. He means to admit that he saw the sheds in the course of their erection but that he at no time was there when the men were working on them; while they were actually working on them.

The WITNESS: That is what I mean.

By Mr. STEWART:

Q. Well, all right. I understand you, then. That is what you mean. Did you know how many feet wide your lot was before you bought it? A. I did.

Q. Who told you that? A. Mr. Achison.

Q. Did you know how deep the lot was? A. No.

Q. Did you ever ask anybody how deep that lot was? A. I did not.

Q. You never asked anybody whether or not you had an alley back there? A. I did not.

Q. Did Mr. Bradley ever talk with you on that point? A. No indeed.

Q. He never said to you that your lot was so many feet front by so many feet deep? A. No indeed. It didn't interest him whatever.

Q. How long was it after you got that property before you
112 paid your taxes on it? A. Why, in my name——

Q. No, before you paid taxes on it? A. I paid it in the same spring.

Q. Did you look at your tax receipt? A. Yes.

Q. What was it that it showed, do you remember? A. I disremember.

Q. Well, do you remember it showed you owned such and such a lot in such and such a square?

Mr. PETER: I object. The tax receipt is the best evidence of what it showed, and there has been no notice to produce the same, and I am not aware of whether my client has it or not.

A. (Question not answered.)

Q. Well, you know that you owned a lot numbered so and so in square numbered so and so, didn't you? A. Yes.

Q. Do you remember the exact number of the lot? A. 882.

Q. That is the number of the square, 882. A. The lot is 14 and the square is 882.

Q. Is that the lot Mr. Bradley told you you were buying? A. Mr. Bradley didn't tell me anything. I bought it from Mr. Achison.

Q. Well, but you said that Mr. Bradley looked after it and gave you your directions and advised you while you were buying it? A. He did.

Q. Well, did he tell you you were buying lot 14 in square
113 882? A. Square 882, and he had a deed of trust on it for \$1,000.

Q. On lot 14? A. On lot 14 square 882.

Q. Where is Mr. Bradley now? A. He is located here on F street, I think, between 14th and 15th; somewhere along in there.

Q. You know that Caldwell subdivided lot 14 into three lots? A. Yes, sir.

Q. And that you got one of those lots? A. Yes, sir.

Q. And that your lot is a part of original lot 14? A. Yes.

Q. So that, you didn't own all of 14? A. I own lot 882. That is, when it is subdivided.

Q. You knew that there were records about lots in squares when you bought this place, didn't you? A. I don't understand you.

Q. You knew that there were land records showing the boundaries

of lots in that square when you bought it? A. I don't understand that either.

Q. Well, what did you understand when Mr. Bradley told you the title was perfect? A. Why, because he had a deed of trust on it for \$1,000, and he said he would be a crazy dunce to throw away \$1,000 on something that he knowed he didn't have a clear title to it.

Q. What did he tell you he had a thousand dollars on? A. On my lot and on two of the others.

114 Q. And he told you the title was good according to the records? A. According to the records the title was all right I didn't worry.

Q. When you purchased—that is when you got your deed you considered that you were getting a good title to your lot? A. Who from?

A. From Mr. Achison? A. Why all excepting \$1,000.

Q. Yes, excepting \$1,000? A. Yes.

Q. And that was all the title you needed, excluding the \$1,000? A. That is all.

Q. Do you know who the trustees were under that deed of trust?

A. I do not.

Mr. PETER: Objected to as immaterial, as all these questions have been, but I thought it would take less time.

Q. You can read and write, can you not? A. I can.

Q. Did you read your answer all over before you signed it? A. I did.

Redirect examination.

By Mr. PETER:

Q. I omitted to ask you one question, Mr. Carver, that I forgot.

115 For what was that \$13 paid by you to the District? A. For putting down one drive-way across the pavement.

Q. Where was that drive-way situated? A. Why, in the rear of my lot.

Q. How situated in reference to the stable? A. Why right opposite of the door to drive in.

Q. How in reference to the Southern extremity of the stable—the Southern end of the stable? A. Why, right down just even with the door, so I would have no trouble driving in.

Q. I didn't ask you about how it was situated with reference to the door, Mr. Carver. I asked you how it was situated with reference to the Southern end of your stable. Now, you know which way the South is there, don't you? A. Yes.

Q. Now, you know which is the Southern end of your stable, don't you? A. Yes.

Q. Now, then, how is the drive-way that you paid the District for putting down situated in reference to the Southern end of your stable? A. Right on the side; right on the side. Right at the corner of the stable as you——

Q. Well, which goes further South? A. Why the drive-way.

Q. How wide is the drive-way? A. Well, I could not just tell

you, but it is ordinary; just the same as any other drive-way; wide enough for a horse and wagon to go across.

116 Q. And you say it goes further South than the shed?
A. Yes.

Q. Now, from the point that it first comes opposite to the shed, to the Northern end of the drive-way, is what distance? A. From the Southern end of the—I don't understand that.

Q. Strike out that. For what distance is the drive-way opposite your shed? A. Why, right opposite the side of it.

Q. For what distance? A. I don't understand, Mr. Peter.

Q. You say that the drive-way extends on beyond the stable to a more Southern point than the stable does. A. Yes.

Q. Now, coming up, then, towards the North, you would come to a line opposite the Southern end of the stable wouldn't you? A. Why, near about.

Q. Now, then, how much further does the drive-way extend to the North—for what distance? A. Why, I could not tell you.

Q. As near as you can. A. I could not tell you now, Mr. Peter; not to bless me, because I haven't paid much attention. Because I didn't authorize them where to put it at. They came down and put it down according to their own ideas.

Q. State whether or not that drive-way is opposite to the land which Watson now claims to be a public alley? Is it opposite to it? A. It is right opposite it. Part of it is right opposite it. It is pretty well opposite it, on it.

117 Q. Did the District of Columbia render you a bill there-for? A. They did after I put it down, and I went up and got the balance what was coming to me, of the \$13 which I deposited for them putting it down, and they told me at the time, they told me I would have to have a driveway put down, and they told me it would cost less by moving it now and depositing my money then, which was for them to put the pavement down, and put a drive-way down afterwards.

Q. How did they come to put the drive-way down there? A. They asked me if I wanted one down there to get in, and they said I would have to go down and pay the money before they put the curb in.

Q. Now, just state where that drive-way is in reference to the pavement? A. I don't understand you, Mr. Peter.

Q. Is what the District of Columbia put down on your land? A. Why, no, it is on the pavement. I don't own that. That belongs to the District.

Q. Well, that is just what I am asking you, where it is. You say it is on the pavement? A. It is on the pavement. It belongs to the District.

Q. What it is made of? A. Why the regular material that they put down drive-ways with across the pavement. I forget what they call it.

118 Q. And it was put there for what purpose? A. For me to drive across.

Q. To go from where to where? A. In my stable and out.

Recross examination.

Q. When they told you to put up \$13 deposit, did they tell you that that was the estimated cost of the drive-way, or for one-half of the estimated cost? A. For one-half.

Q. For one-half of the cost of the drive-way? A. Yes.

HOWARD M. CARVER.

Subscribed before me this 12th day of May, 1905.

J. ARTHUR LYNHAM, *Examiner*.

(At this point an adjournment was taken until Monday May 1, 1905, at 2 o'clock p. m.)

MONDAY, *May 1*, 1905—2 o'clock p. m.

Met, pursuant to adjournment.

Present, the Solicitors for the respective parties, and the parties litigant.

Owing to the non-attendance of witness for the defendant, an adjournment was taken until Friday, May 5th, 1905, at 2:30 o'clock p. m.

119 FRIDAY, *May 5th*, 1905—2.30 o'clock p. m.

Met, pursuant to adjournment.

Present: Joseph H. Stewart, Esq., Solicitor for the complainant, Arthur Peter, Esq., Solicitor for the defendant, and the parties litigant.

Whereupon—MILTON P. CALDWELL; called as a witness on the part of the defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. PETER:

Q. Your name is Milton P. Caldwell? A. Yes, sir.

Q. You are the Milton P. Caldwell who subdivided original lot 14 square 882, in the City of Washington, in the District of Columbia, on or about July 7, 1897, are you not? A. Yes, sir.

Q. I hand you Complainant's Exhibit No. 1, upon which it appears that in the subdivision of that lot there was a proposed alley five feet wide. State whether or not you ever gave that land to the District of Columbia, or to the public? A. No, sir; it was an agreement I made with the authorities down there that, whenever the opposite party subdivided, that they would have them set off five feet, and then my five foot would make a ten foot public alley. I never parted with any title.

Mr. STEWART: I want to object to the agreement, unless it appears that the agreement was in writing. Was that agreement in writing?

By Mr. PETER:

Q. Was the agreement in writing? A. No, sir.

Mr. STEWART: Well, I object to the testimony as being incompetent and void under the Statute of Frauds.

Q. Until the five feet should be obtained from the adjoining lot, who was to own the five feet shown there as a proposed alley? A. Why, the title was in me at that time. I traded it—traded the property.

Cross-examination.

By Mr. STEWART:

Q. After that subdivision was admitted to record upon your request—that is, upon your petition and the order of the Commissioners, you then transferred the entire property to Mr. Achison, did you not? A. Yes, I traded the property to a man by the name of Achison.

Q. That is, you gave him all you had in lot 14?

Mr. PETER: I object. The deed is the best evidence of what he gave him. If you want to cross-examine him about the deed show him the deed under the decision in the Queens case.

121 A. My deed was admitted to record. That would be a matter that would show for itself, I should think.

Q. There is a certified copy of the deed. (Showing witness Complainant's Exhibit No. 3.)

Mr. PETER: It does not convey the alley there. It simply conveys the lots.

By Mr. STEWART:

Q. Well, you gave him all you had in lot 14 when you passed that deed to him, did you not?

Mr. PETER: I object. The deed speaks for itself and shows simply that he conveyed the specific lots according to the plat. Those lots do not include the five feet.

Q. (Continuing:) What did you do, Mr. Caldwell—did you convey all you had in lot 14 when you gave him that deed? A. Why, I signed this deed that was made at the time. I don't see anything specified in here about the alley.

Q. I am not talking about the alley. I am talking about original lot 14. Did you convey all you had in original lot 14 when you gave Mr. Achison that deed? A. I guess I did. I presume so.

Mr. PETER: I object to the answer because the deed says itself that it gives the lots in question, and the deed is the best evidence of what was conveyed. I request that the witness read the description in the deed before he answers the question.

122 A. (The witness reading the deed.)

Q. I want to ask you another question——

Mr. PETER: Let him read that description and see if he wants his answer to stand.

Mr. STEWART: It may make it unnecessary for him to read that description if I ask him another question.

The WITNESS: This says: "all of those certain pieces or parcels of land and premises known and distinguished as and being lots 32, 33 and 34 of M. P. Caldwell's subdivision of original lot 14 square 882, as per plat of record in the office of the Surveyor of the District of Columbia, in Liber 22 folio 109." That's all.

Q. Then it says together with the rights, ways, easements and hereditaments.

Mr. PETER: I make the same objection, that the deed speaks for itself.

Q. (Continuing:) I ask you if the deed did not say together with the rights, ways, easements and hereditaments? A. (Reading from deed:) "Together with all the improvements, ways, easements, rights, privileges and appurtenances."

Q. Well, that is the alley is it not? A. I don't know about that.

Q. Well, did you reserve that alley to yourself when you gave that deed to Mr. Achison—did you reserve it by any writing? A. I think there was only a verbal arrangement that I had with me——

123 Mr. PETER (to the witness): He has not asked you for any verbal arrangement, Mr. Caldwell. He wants to know if there was any other writing save that.

The WITNESS: No.

By Mr. STEWART:

Q. No other writing? A. None.

Q. What did you get for the deed that you gave to Mr. Carver after this suit began conveying that alley?

Mr. PETER: Objected to as immaterial.

A. What did I get for it?

Q. Yes; how much money did you get for it? A. I have never seen any money at all.

Q. Then, it was a conveyance without any consideration? A. Consideration of one dollar, I believe, or something of that sort.

Q. That is the last deed you gave to Mr. Carver? A. Yes.

Q. Recorded, I think, in the month of February, 1905? A. Yes.

MILTON P. CALDWELL.

Subscribed before me this 11th day of May, 1905.

J. ARTHUR LYNHAM, *Examiner*.

124 Thereupon ABNER Y. LAKENAN, called as a witness on the part of the defendant, and being first duly sworn, was examined and testified as follows:

Cross-examination.

By Mr. PETER:

Q. What is your full name and occupation? A. Abner Y. Lakenan. Chief Clerk Engineer Department, District of Columbia.

Q. How long did you occupy that position? A. That position of chief clerk about ten years the first of last January.

(Counsel for the complainant waives notice to produce original of letter to complainant from William Tindall, Secretary to Board of Commissioners, dated April 18, 1903, and also letters from same to same dated June 1, 1901.)

Q. Mr. Lakenan, I hand you eight papers, and request that you state whether or not they are true copies of the papers on file in the office of the Engineer Commissioner of the District of Columbia? (Handing witness papers.) A. (After examining same.) They are identical, except where corrected. I made the corrections myself in these copies so as to make them agree with the originals.

Q. How do you know that they are true copies? A. By taking the original papers and comparing them.

125 Q. Who took the original papers and compared them? A. I held these copies and had the gentleman who had them made read off the originals to me, and I made the corrections on these from the originals.

Q. And that gentleman was Mr. Ray from my office? A. I think it was, yes, sir.

Q. Is that the gentleman? (Indicating Mr. Preston B. Ray.) A. That is the gentleman.

Q. I notice on a number of these papers—take, for instance that one, which is marked Defendant's Exhibit No. 1, the words: "Approved July 29, 1899, W. E. C.," and underneath that: "Captain of Engineers, U. S. A., Acting Engineer Commissioner," and then the initials "J. W. R.," and then the initials "J. B. W." What do they mean? A. That means William E. —, who was Acting Engineer Commissioner at that time. "J. W. R." is John W. Ross, and "J. B. W." is John B. Wight.

Q. What does it mean that they have done? A. Stamped.

Q. Why did they stamp it? A. Approved.

Q. What does "approved" mean? A. Approved this action above.

Q. Does that carry any indication as to what, if any, action the Board of Commissioners took on that paper? A. Yes, sir.

126 Q. What does it show? A. That letter following it.

Q. I asked you what that writing that I then called to your attention—what, if any action that indicates the Board of Commissioners of the District of Columbia took in reference to the paper upon which it is attached? A. It approves the action of this en-

dorsement; that recommendation of the computing engineer. Then they approved it and the enclosed letter is the result of that approval; that copy that that is taken from.

Cross-examination.

By Mr. STEWART:

Q. Are those papers all certified? A. Yes, sir.

Mr. STEWART (to Mr. Peter): Have you offered them in evidence?

Mr. PETER: No; I am going to offer them in evidence after I put Mr. Ray on the stand.

ABNER Y. LAKENAN.

Subscribed before me this 12th day of May, 1905.

J. ARTHUR LYNHAM, *Examiner*.

127 Thereupon PRESTON B. RAY, called as a witness on the part of the defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. PETER:

Q. I hand you eight papers marked Defendant's Exhibits numbered from 1 to 8, both inclusive, and ask you if you ever saw them before? (Handing witness papers.) A. (After examining same.) Yes, sir, I have.

Q. Who made them? A. I did.

A. From what? A. From papers in the District Building.

Q. From whom did you obtain the papers from which you made those copies? A. From the clerk to the Engineer Commissioner.

Q. State whether or not they are exact copies? A. Yes, sir, they are.

Mr. PETER: I offer them in evidence.

(And the same are filed by the examiner, marked Defendant's Exhibits numbered from 1 to 8, both inclusive.)

Mr. STEWART: I object to them as being incompetent.

Mr. PETER: That is all.

Mr. STEWART: I have no cross-examination.

PRESTON B. RAY.

Subscribed before me this 13th day of May, 1905.

J. ARTHUR LYNHAM, *Examiner*.

128 Thereupon HOWARD M. CARVER, the defendant, having been heretofore duly sworn, was recalled and further interrogated.

Direct examination.

By Mr. PETER:

Q. Mr. Carver, I hand you a paper purporting to be a deed from Milton P. Caldwell to you dated February 3, 1905. Will you tell us what that is? (Handing witness deed.) A. (After examining same.) Why that is the deed for the five feet of ground back of my lot.

Q. Whose signature is attached thereto? A. Milton P. Caldwell and his wife.

Q. Do you know their handwriting? A. Yes, sir, I know his'n.

Q. Mr. PETER: I offer the deed in evidence.

(And the same is filed by the Exmainer marked Defendant's Exhibit 9.)

Mr. STEWART: I object to the deed as being incompetent to convey any interest in the five feet; incompetent and immaterial.

Cross-examination.

By Mr. STEWART:

Q. Mr. Carver, how long have you known Mr. Caldwell? A. I can't really remember now, but not over two years ago.

Q. Well, when did you first become acquainted with his
129 handwriting? A. Why, by his signature on the paper.

Q. Which paper? A. On the deed he gave me.

Q. Was that the first time you ever saw him write? A. That is the first.

Q. Did you see him sign his name to the paper—to the deed?
A. Yes.

Q. Where was it signed? A. At his house—no, at his office.

Q. How much did you give him for the deed? A. Ten dollars.

Q. How did you happen to buy the deed from him? A. Well, of course, like everybody else who has anything for sale.

Q. Did he solicit you to buy it? A. Why, yes. That was the only way I could buy it—was to buy it.

Q. He came to you and offered to sell it to you? A. I went to him.

Q. And offered to buy it? A. And offered to buy it.

Q. When he says the consideration was only one dollar he is mistaken is he—if he would say that the consideration he received was that amount of money he is mistaken?

Mr. PETER: I object to that form of question, as it includes the opinion of the witness as to what Mr. Caldwell might say.

130 A. I don't understand that.

Q. If Mr. Caldwell should say to you, or any one else, that the only money he received for that deed was the sum of one

dollar, he would be mistaken, would he? A. I don't understand you. I don't answer nothing I don't understand.

Q. Those are simple words in the English language. If Mr. Caldwell says that "Mr. Carver paid me one dollar" when I signed him that deed for that alley, would he be telling the truth or would he not be telling the truth?

Mr. PETER: I object to it and instruct the witness not to answer a question which is put in any such manner. He is not called upon to express his opinion about the truthfulness of any other witness. If you want to know any fact the witness will answer that for you.

Mr. STEWART (to the witness): Are you going to answer?

Mr. PETER: I instruct him not to answer.

The WITNESS: I am not.

By Mr. STEWART:

Q. Well, you say you paid him \$10 for the deed? A. Why, certainly; didn't the deed call for \$10.

131 Q. Why did you wait so long to get a deed for that alley—
why didn't you get a deed? A. Why, you said that I
didn't own the five feet of ground in the court down here,
and you made an argue that I didn't pay any taxes, and we searched
the record and we find that Milton P. Caldwell owns five feet of
ground back of all those three houses. That is the reason I got a
deed from him if you want to know.

Q. Is Mr. Caldwell married? A. He is. I suppose so. I never
saw him married.

Q. When you got your deed from Mr. Achison you got the rights,
ways and easements connected with your lot, did you not? A. I
don't remember.

Q. Well, I will show it to you.

Mr. PETER: I object. This has no relation to the matters brought
out in the examination in chief.

Q. (Continuing:) I show you a certified copy of your deed.
Now, you see these words here, "Together with all and singular the
improvements, ways, easements, rights, privileges and appurtenances
to the same belonging." You see those words there? A. Yes.

Q. Well, what did you understand by that? A. I didn't under-
stand that at all.

Q. You don't understand that at all? A. I don't understand
that.

Mr. STEWART: That is all.

Mr. PETER (to Mr. Stewart): You waive the production of Mrs.
Caldwell to prove her name?

132 Mr. STEWART: Well, if her name is on the deed I waive it.
Of course, it is not necessary if her name is not on there, but if
it is I will waive it.

HOWARD M. CARVER.

Subscribed before me this 12th day of May, 1905.

J. ARTHUR LYNHAM, *Examiner*.

(The taking of testimony on the part of the defendant is here announced as closed.)

NOTE BY THE EXAMINER.—On the 24th of May, 1905, before the filing of these depositions, the Solicitor for the complainant left with the Examiner the paper filed herewith, marked "Exhibit Rebuttal No. 1," stating at the time that he desired to introduce the same by way of rebuttal on the part of the complainant.

J. ARTHUR LYNHAM, *Examiner*.

133

DEFENDANT EXHIBIT 1.

WASHINGTON, D. C., *July 20, '99.*

Hon. Commissioners.

GENTS: A year ago I built three houses on lot 14 in square 882, which was sub-divided with a five foot alley my carpenter through mistake put the sheds on the alley I sold one of the houses to a Mr. Carver, who when I found out the mistake refused to let me move the shed at my expence so I could have the use of the alley for my other houses now I request you gentlemen to notify him at once to move his shed so I can have the use of the alley for my other houses as it is public property the sheds has no rights there hoping you *will act prompt* I remain (his name is Howard Carver, #603 L St., S. E.)

Respectfully,
(Signed)

E. A. ATCHISON,
#107 Ky. Ave. S. E.

21890/1 E.D.

AUGUST 3RD, 1899.

Mr. E. A. Atchison, #107 Ky. Ave., S. E.

DEAR SIR: Referring to your request that the owner of the premises #603 L. St., S. E. be required to move his shed from the alley, square 882, the Commissioners direct me to state that as the said alley is not a public alley they cannot afford you the release desired.

Very respectfully,
(Signed)

WM. TINDAL, *Sec'y.*

134

(Endorsed:) No. 21890/1 Engineer Department Commissioners Office Office Engineer Commissioner, D. C. Received July 21, 1899 July 20, 1899 E. A. Atchison, #107 Ky. Ave., S. E. Requests that the owner of premises #603 L St. S. E. be required to remove his shed from public alley, in square 882. *1st Endorsement.* July 26, 1899 Respectfully Returned. The subdivision creating this alley was admitted to record under date of Jly. the 7th, 1897 pursuant to a form of application then in vogue, embodying a form

of order of the Commissioners in the following language "Ordered: the surveyor of the D. C. will admit this plat of subdivision to record in his office under Act of Congress approved Aug. 27, 1888." Unless this general wording shall be deemed to have abrogated the effect of general orders made pursuant to the requirements of this Act, Par. 4 of which reads as follows: "No public alley in the City of Washington and Georgetown shall be less than ten feet in width." It would seem that this alley is not public and the writer cannot be afforded the relief requested, at any rate he himself has not so treated it since the woodsheds of these properties built at the time he owned them cover its whole area, nor does its width and course indicate that it was created otherwise than for the sole use of this subdivision. L. P. Bradshaw. Not enclosed.

2nd. Endorsement, July the 27-, 1899. Respectfully forwarded to the Engineer Commissioner, D. C.; I recommend that the writer be advised that the alley to which he refers is not public. The preceding endorsement clearly shows that it is not and it being but five feet wide I am sure the District does not wish it.

(Signed)

C. B. HUNT,
Computing Engineer.

135 Approved
 July 29, 1899.

W. E. C.,
 Cap't. of Engineers U. S. A. Acting
 Engineer Commissioner. J. W. R. J. B. W.

A true copy of original on file in Eng'r Dep't, D. C.

A. Y. LAKENAN,
Chief Clerk E. D.

136 DEFENDANT EXHIBIT 2.

John Ridout, Att'y at Law, Fendall Bldg., 344 D — N. W.

WASHINGTON, D. C. Aug. 7, '99.

The Hon. Commissioners of the District of Columbia.

GENTLEMEN: In behalf of Mr. Eugene A. Achison and in reply to your recent letter to him concerning obstructions in alley in square 882, shown on the plat of M. P. Caldwell, subdivision of lot 14 in said square, I beg to call your attention to the fact that under date of May 13, 1897, the Commissioners passed an order accepting said subdivision upon the plat of which said alley is shown.

The dedication by Caldwell and the acceptance by the Commissioners have constituted a complete dedication of the alley to public use; and the Commissioners are therefore clothed with full authority to institute proceedings to remove obstructions from the alley.

Please advise me at your earliest convenience whether such proceedings will be instituted.

Yours respectfully,

JOHN RIDOUT.

(Endorsed:) No. 21890/2 Engineer Department. No. 23366/4 Commissioners Office, Office Engineer Commissioner, D. C. Received August 8th, 1899. John Ridout, Fendall Bldg., Alley square 882, States that by virtue of subdivision by M. P. Caldwell of lot 14, that alley was dedicated and accepted and that authority to remove obstructions was thereby given. August the 8th, 1899. Computing Engineer. 1st *Endorsement*, Aug. 9, 1899. Respectfully returned: I am unable to verify the writer's statement regarding the Commissioners actions relating to this subdivision, except as had pursuant to my endorsement of original paper enclosed. It is a fact however and it is presumed that the writer intends to refer to this, that a letter under date of May 13, 1897, signed by the Secretary of the Board was addressed to M. P. Caldwell, advising him that his proposed subdivision of lot 14 square 882 will meet with their approval. The subdivision in point of fact having been admitted to record pursuant to this general wording: "Under Act of Congress approved Aug. 27, 1888" and said Act of Congress giving general orders *promulgated* thereunder and in force at the time, the force and effect of law, there could have been no acceptance in my judgment such as would have constituted a five foot alley a public alley. L. P. Bradshaw, Inspector. 2nd. *Endorsement*, Aug. 9th, 1899. Respectfully forwarded to the Engineer Commissioner, D. C., concurring in the preceding endorsement. C. B. Hunt, Computing Engineer. 3rd *Endorsement*, Sept. 8th, 1899. Respectfully forwarded to the Commissioners recommending reference to the Attorney D. C. for opinion. Signed L. H. Beach, Capt. Corps of Engineers, U. S. A. Engineer Commissioner, D. C. J. W. R. 4th *Endorsement*. Sept. 11th, 1899. Respectfully referred to the Attorney for the D. C. By Order William Tindall. 5th *Endorsement*. Nov. 10th, 1900. Respectfully returned with request for full report as to facts of occupation etc. A. B. Duvall, Atty. D. C. 6th *Endorsement*. Nov. 24, 1900.

138 Respectfully returned: Regarding the occupation of alley in question it appears that after the approval of the subdivision creating it in 1897, the then owner in improving the lots of the subdivision built over the alley space with woodsheds. Such occupation continued without question until July '99, when the owner having disposed of one of the properties, No. 603 L St. applied to have its woodshed removed and the alley opened. No alley has ever existed on the ground in fact and parties purchasing say that they purchased with the understanding that the woodshed represented the rear limits of the respective lots, though the deeds of conveyance contain no discription by metes and bounds but refers to the subdivision of record whereon the alley is shown. As regards the acquisition of the other half from contiguous lots as appears to be a condition of an acceptance of an alley less than ten feet in width "equitable" action in this regard would seem to be precluded since the contiguous ground in this case is occupied by a brick building. L. P. Bradshaw, Clerk. E. D. No. 26th Capt. Newcomer Approved. H. C. Newcomer, Capt. of Engineer U. S. A. Approved Nov. 27th., 1900 L. H. Beach Capt. Corps of Engineers, U. S. A. Engineer

Commissioner D. C. H. B. E. M. J. W. R. A true copy of original A. Y. Lakenan Chief Clerk, E. D.

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DEFENDANT EXHIBIT No. 3.

Office of the Attorney for the District of Columbia, #472 La. Ave.,
N. W.

WASHINGTON, D. C., — 17th, 1900.

Hon. Commissioners, D. C.

GENTLEMEN: I have duly considered the request of E. A. Atchison that the owner of premises #603 L St., S. E. be required to remove his shed *from the public alley in square 882* which with the reports by the Inspector and Computing Engineer you referred to me for opinion.

It appears that on May 13th, 1897, the Commissioner- passed an order approving the proposed subdivisions of lot 14 square 882 by M. P. Caldwell the owner thereof; and on July 7th, 1897, said sub was recorded in the office of the Surveyor.

Said lot as subdivided contained three lots fronting L street, and in the rear of said lots opening into Canal street was shown an alley five feet wide adjoining lot 13 in said square.

The Act of Congress "to regulate the subdivisions of lands within the District of Columbia" approved Aug. 27th, 1888, provided in Sec. 2 thereof.

That all spaces on any duly recorded plat of land thereon designated as streets, avenues or alleys shall thereupon become public ways, provided they are made in conformity with the provisions of section one of this act and as such be under the protection of the laws and ordinances in force applicable to public roads out of said City.

140 SEC. 1. Authorized the Commissioner- to "make and publish such general orders as may be necessary to regulate the plotting and subdividing of all lands and grounds etc."

The Commissioner- on Dec. 6th, 1888 made certain general orders under this authority and thereafter from time to time amended them. Among the orders in force May 13th, 1897, when the afore-said subdivision of said lot 14 was approved, were the following; viz:

Paragraph 4. "No public alley in the City of Washington or Georgetown shall be less than ten feet in width. Such alley shall be provided wherever practicable and where the subdivision shows lots less than 25 feet frontage (May 20th, 1895.)

* * * * *

Paragraph 18. "In the squares of all subdivisions without the Cities of Washington and Georgetown, public alleys will be required so that as far as practicable every lot shall abut thereon; such alleys shall not be less than sixteen feet in width and continue through the square, Provided: that no lot or part of lot in any existing subdivision within the D. C. shall be further subdivided into lots less than

twenty-five feet width without suitable alley provision, so that each lot will as far as possible abut thereon: Provided further that such alley or alleys may be only one-half the usual width if in the judgment of the Commissioners of the District of Columbia, the other half should be acquired from contiguous lots, (May 18, 1894, Feb. 12, 1896.)

It is a matter of very great doubt whether the approval of this subdivision, so far as the alley was concerned, was not improvidently made by the Commissioners.

Apparently paragraph 4 and not paragraph 18 covers such a situation as was presented and that paragraph required an alley not less than ten feet in width.

141 But the land was created as if it was outside of the City of Washington or Georgetown and as if the proposed subdivision was a subdivision of a subdivision and not a subdivision of an original lot.

If the approval was made upon the expectation of acquiring five feet more land from the contiguous lots in order to form a ten foot alley, this is practically out of the question because the contiguous lot is occupied by a brick building.

Whatever, however, may have — the occasion of approving the subdivision, in point of fact no alley has ever actually existed and recognizing this condition of affairs and the improbability of securing an alley of the requisite legal length, the present complainant, who was then the owner of the three subdivision lots in July 1898, built three houses thereon and placed over the alley space three wooden sheds.

He has since sold one of the lots with the house and shed thereon to Howard Carver and he now desires the Commissioner to cause the shed erected by himself on the lot which he had thus conveyed to be removed as an obstruction to a public alley.

The alley is of no public use and Mr. Atchison the only one of the public immediately interested therein, seems to have ignored it and to have built upon it and the appeal now made comes with very bad grace from him.

142 Under all the circumstances of the case I am of the opinion that the Commissioners should not comply with the request.

Very respectfully,

A. B. DUVALL,
Attorney D. C.

(Endorsed:) No. 233664. Commissioner's Office No. 21890/5 Engineer Department. Dec. 19th, 1900. A. B. Duvall Attorney, D. C. Submits adverse opinion concerning the request of E. A. Atchison, that the owner of premises #603 L St., S. E. be requested to remove his shed from the public alley in square 882. 1st. Endorsement. Dec. 20th, 1900. Engineer Department. Approved Dec. 21st, 1900. L. H. Beach, Capt. Corps of Engineers U. S. A. Engineer Commissioner D. C. H. B. F. M. J. W. R. A true copy of original. A. Y. Lakenan, Chief Clerk E. D.

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DEFENDANT EXHIBIT 4.

WASHINGTON, D. C., *June 7, 1901.*

Honorable Commissioners, D. C.

GENTLEMEN: The records of the Surveyor's Office show a subdivision of original lot 14 in square 882 was made July 7, 1897, by one M. P. Caldwell. The lot was subdivided into lots 32, 33 and 34 and alley five feet wide as shown by enclosed plat. These lots were purchased by Mr. E. A. Atchison and a row of three houses built thereon. Through negligence on the part of Mr. Atchison his carpenters in erecting the sheds in the rear of these houses instead of putting them on the south line of the lots built them over the five foot alley. This was not discovered until the adjoining land on the east and south had been subdivided and built upon. Mr. Atchison expresses his willingness to rectify the mistake and offers to move the shed or if they cannot be moved to take them down and rebuild them on their proper line. As the representative of the holder of the first trust note on lots No. 33 and 34 I ask that the Commissioners will order the removal of these sheds from the public alley. If these lots should be offered for sale under the deeds of trust, the fact that the alley was blocked by these sheds would be a decided disadvantage in effecting a sale.

Very respectfully,

R. E. BRADLEY.

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JUNE 18, 1901.

Mr. R. E. Bradley, #1302 F St., N. W.

DEAR SIR: In replying to your letter of the 7th inst. relative to the encroachment of sheds upon alley in rear of lots 33 and 34, square 882, I am directed to inform you that the alley in question is not a public alley, so that the question of its obstruction is one for settlement between the parties interested.

Respectfully,

WILLIAM TINDAL, *Secy.*

(Endorsed:) No. 21890/7 Engineer Department. No —. Commissioners Office Received June 8, 1901. June 7, 1901. Bradley, R. E. #1303 F. St. N. W. Submits statement in regard to sheds which encroach upon public alley in rear of lots 33 and 34, square 882 and requests that the Commissioners order the removal of same. 1st Endorsement. June 1st, 1901. Respectfully forwarded to the Engineer Commissioner D. C. (through Capt. Newcomer) enclosing the previous papers in the case. No circumstances related herein appear to materially effect the facts which were before attorney at the time of his decision, that the alley in question was a private and not a public one, and therefore it would appear that the removal of the structures is a matter as between private parties. C. B. Hunt, Computing Engineer. Approved June 13, 1901. L. H. Beach, Capt., Engineer Corps U. S. A. Engineer Commissioner. H. B. F. M. J. W. R. A true copy of original. A. Y. Lakenan, Chief Clerk E. D.

MAY 14, 1902.

To the Honorable Commissioners of the District of Columbia, Washington City.

GENTLEMEN: My client Lewis L. Watson is the owner of lot 33 in square 882 as is indicated on the annexed plat. And lots 32 and 34 with the alley five feet wide are the results of a subdivision of original lot 14 in square 882 which was made July 7, 1897, by M. P. Caldwell and is recorded in the Surveyor's Office in subdivision book 22, page 109.

The owner of lot 32 in said square has extended his fence (indicated on plat by dotted lines), so as to close completely the said alley. I have the honor to request that the obstruction be removed.

Very respectfully,

ALEXANDER MUNCASTER.

(Endorsed:) No. 21890/8 Engineer Department No. 239485 Commissioner's Office Received May 15, 1902. Muncaster, Alexander, # 482 La. Ave. N. W. In behalf of Lewis L. Watson owner of lot 33, square 882 request removal of fence obstructing alley in rear of said lot. 1st. Endorsement. May 15, 1902. Respectfully returned, inviting the attention to the opinion of the attorney D. C. in regard this alley as given in 21890 E D sub 5 enclosed A. L. Thomas, Inspector. 2nd. Endorsement. May 17, 1902. Respectfully
146 returned to the Engineer Commission (through Capt. Newcomer) recommending that the writer be advised that the alley referred to is a private one and that the District is unable to take the action which he requests. C. B. Hunt, Computing Engineer. 3rd. Endorsement. May 19, 1902. Respectfully forwarded to the Engineer Commissioner D. C. It appears from the enclosed file that the Commissioners have notified complainant in a couple of instances that this alley is a private one although the status does not appear clear from the attorney's opinion. It appears to me that the public status of this alley should be affirmed and maintained by the D. C. as it is desirable for the houses to have alley facilities. H. C. Newcomer, Capt. of Engineer U. S. A. Asst. to Engineer Commissioner, D. C. Approved June 5, 1902 H. C. Newcomer, Capt. Engr. U S A Acting Engr Commr. Approved June 6, 1902 Henry B. F. Macfarland, Commissioner D C 4th Endorsement. June 10, 1902. In view of the opinion of the City solicitor herein, I am reluctantly compelled to the conclusion that it would be inexpedient for the Commissioners to assert public title to this alley under all the facts named. John W: Ross, Commissioner. 5th Endorsement. June 11, 1902. Respectfully forwarded to the Commissioners recommending reference to the City solicitor for opinion as to the public or private status of this alley, this question not having been fully covered in his former opinion. H. C. Newcomer, Capt. Corps of Engineer- U. S. A. Acting Engineer Commissioner, Approved June 6, 1902. Henry B. F. McFarland, Acting Engineer Commr. Approved June 12th,

1902 Henry B. F. McFarland, Commissioner D. C. Approved June
 13, 1902. John W. Ross, Commissioner D. C. June 13, 1902. Re-
 spectfully referred to the City Solicitor as per 5th endorse-
 147 ment. William Tindal, Secty. A true copy of original.
 A. Y. Lakenan Chief Clerk, E D

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DEFENDANT EXHIBIT 6.

WASHINGTON, D. C., *June 7, 1902.*

GENTLEMEN: Referring to the enclosed clipping from this morn-
 ing's Post, I beg to say in addition to what Capt. Newcomer is re-
 ported to have stated that the alley in question is closed to the abut-
 ting property not by a fence but by an unsightly shed which is used
 as a stable, as this stable immediately adjoins the front door of prop-
 erty # 1108 6th St., S. E., owned by my client, Miss A. E. Browne,
 she is interested in the opening of the alley to the extent of having
 the offensive obstacle to such opening removed.

Very respectfully,

W. S. MINNIX,
 # 1427 F St., N. W.

The Honorable, The Commissioners of D. C.

(Endorsed:) No. 21890/9 Engineer Department. No. ———
 Commissioner's Office. June 9, 1902. Minnix, W. S. #1427 F St.,
 N. W. Referring to the enclosed clipping from the Post relative to
 alley in square 882, states that in addition to a fence the alley is
 obstructed by a shed used as a stable and requests that same be re-
 moved and the alley opened. 1st. Endorsement. June 28, 1902.
 Respectfully returned to Capt. Harding with report that the shed
 complained of was erected about Dec. 1897, or afterwards constructed
 under authority of permit issued Dec. 1, 1897 in connection
 149 with dwellings erected on L Street and abutting on the rear
 of the lot of the complainant. As this shed was never au-
 thorized as a stable the owner has been notified to vacate the same
 for stable purposes. I know of no authority under the building regu-
 lations by which this office can require the removal of the shed if used
 for the purpose permitted by the building regulations or for a fuel
 shed. The status of the alley is one which cannot be determined by
 any records in this office. S. Ashford, Inspector of Buildings. 2nd.
 Endorsement. June 30, 1902. Respectfully forwarded to the
 Engineer Commissioner, D. C., inviting attention to preceding en-
 dorsement. Chester Harding, Capt. Corps Engineers, U. S. A. Asst.
 Engineer Commissioner. A true copy of original. A. Y. Lakenan
 Chief Clerk E D.

DEFENDANT EXHIBIT 7.

603 L St., S. E.

WASHINGTON, D. C., *May* 12, 1903.

To the Commissioners of the District by ordered Since the 13th of April to move my woodshed and fence off of the public space from lot 33 square 882 I have complied with your notice as you said you had confirmed the acceptance of the five foot alley and at your request I have done so and still the main obstruction Stands untouched will gratify me by giving me *by giving me* some light as to what will be done as you have it in your power to do either to open or close as you see cause. I am anxiously waiting a reply as there is no possible way for an entrance except the way it is layed out on your plat at the Surveyor's Office.

Yours respectfully,

LEWIS L. WATSON.

(Endorsed :) No. 21890/14 Engineer Department. No. 239485/2 Commissioner's Office. Received May 13, 1903. May 12, 1903. Watson, Lewis L. # 603 L St., S. E. Requests to be informed as to matter of opening alley square 882. Computing Engineer. May 13, 1903. 1st Endorsement. May 14, 1903. Respectfully returned inviting attention to endorsement No. 2 E. D. 21890/13 herewith enclosed. A. L. Thomas, Inspector. 2nd endorsement. May 18, 1903. Respectfully forwarded to the Engineer Commissioner, D. C. (through Capt. Newcomer) requesting such reference and resulting instructions as will author-atively advise this office as to the
 151 actual status of this alley in order that appropriate present and future action may be taken accordingly. C. B. Hunt, Computing Engineer. 3rd Endorsement. May 19, 1903. Respectfully forwarded to the Commissioner recommending that the matter be referred to Mr. James L. Pugh Asst. Corporation Counsel with request for a statement of the decision of the Court upon this case. John Biddle Maj. Corps of Eng. U. S. A. Engineer Commissioner. Approved May 20, 1903 Henry B. F. MacFarland, Commr. D. C. Approved May 21, 1903, Henry L. West, Commr. D. C. 4th Endorsement. May 22, 1903. Respectfully referred to James L. Pugh, Asst. Corporation Counsel with request for a statement of the decision of the court upon this case. By order William Tindall, Secty. Judge Kimball held in this case that as the D. C. had taken action on the offer to give this land to the D. C. and had declined to so receive they could not afterwards without the consent of the owner adopt and thereby make this a public alley. He held it was a private alley. James L. Pugh, Jr. A true copy of original. A. Y. Lakenan, Chief Clerk, E. D.

603 L St., S. E., *Dec.* 8, 1903.

To the Commissioners of the District of Columbia :

I have a letter of April 13, 1903, a survey made by the engineer department of an encroachment on public space from lot 33 square

882 and then another notice that I should move off in 10 days failure to comply with this will necessitate legal action of the District by order of the Commissioners well I have complied with your demands and here it is winter we are yet in the same position the alley is not opened and we have had no further information and every once and a while some one comes and order that our yards to be cleaned all dirt ashes slop to come through my kitchen, dining-room and hall to the street and I and family exposed to the cold weather haven't a right to a back entrance as it is here for us and just one to obstruct our right away and yet I am confined to your laws and wishes to go by them.

What shall I do?

Is this alley to be opened?

LEWIS LEE WATSON.

I am anxiously waiting a reply.

DEC. 18, 1903.

Mr. Lewis L. Watson, #603 L St., S. E.

153 DEAR SIR: The Commissioners direct me to inform you in response to your letter of the 8th inst. asking what action was to be taken relative to paving alley in square 882, that the question of removing some of the obstructions in this alley was carried into the police court sometime since and the decision of the court was that this was a private alley.

Very respectfully,

WILLIAM TINDALL, *Sec't'y.*

(Endorsed :) No. 21890 / 15 Engineer Department No. — Commissioner's Office. Received Dec. 9, 1903. Dec. 8, 1903. Watson, Lewis L. #603 L St., S. E. Asks what action is to be taken relative to paving alley square 882. Dec. 9'', 1903. Capt. Newcomer. 1st. Endorsement. Dec. 11, 1903. Respectfully returned inviting attention to the action of the court as set forth in 5th endorsement on file 21890 / 14 E. D. herewith enclosed. A. L. Thomas, Inspector. 2nd. Endorsement. Dec. 14, 1903. Respectfully forwarded to the Engineer Commissioner D. C. (through Capt. Newcomer) enclosing 21890 / 16. Inviting attention to the enclosed file 21890 / 14 E. D. from which it would appear that when the question of removing some obstructions in this alley was carried to the police court was that this was a private alley and recommending that the writer be accordingly advised. Engineer of Highways. Dec. 15, 1903. Approved by Engineer Commissioner. Dec. 15, 1903. Board of Commissioners. Dec. 16, Approved H. B. F. M. Dec. 17, Approved H. L. W. Comm'rs D. C. A true copy of original A. Y. Lakenan Chief Clerk E. D.

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DEFENDANT EXHIBIT 8.

WASHINGTON, D. C., May 24, 1901.

To the Commissioners of the D. C.

DEAR SIR: I bought of Mr. Eugene Atchison lot 33 square 882 L Street, S. E., over a year ago, which he said was a five foot public

alley and I cant have the use of it on account of a stable. The plat also shows a five foot public alley as I have no side entrance I will ask if the alley will be opened.

Yours respectfully,

MR. LEWIS LEE WATSON,
603 L St., S. E.

JUNE 1st, 1901.

Mr. Lewis Lee Watson, # 603 L St., S. E.

DEAR SIR: In reply to your request that obstructions be removed from the five foot alley in the rear of lot 33 square 882, I am directed to inform you that as this is not a public alley, the Commissioners cannot take any action in the matter.

Very respectfully,

WILLIAM TINDALL.
Secy. Board of Com'rs. D. C.

(Endorsed :) No. 21890/6 Engineer Department. No. — Commissioners Office. Received May 25th, 1901. May 24th, 1901. 155 Watson, Lewis Lee. # 603 L St., S. E. Requests that alley be opened in rear of lot 33 square 882. May 27th, 1901. Computing Engineer. 1st Endorsement. May 28th, 1901. Respectfully forwarded to the Engineer Commissioner, D. C. (through Capt. Newcomer) with a statement that by action on file 21890/1 and 21890/2 it is understood that the Commissioners do not regard this alley as public. These papers are now with the Board of Commissioners. C. B. Hunt, Computing Engineer. Approved H. C. Newcomer, Capt. of Engineers U.S. A. Noted L. H. B. H. B. F. M. A true copy of original. A. Y. Lakenan, Chief Clerk, E. D.

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DEFENDANT EXHIBIT No. 9.

This deed, Made this third day of February in the year one thousand nine hundred and five by and between Milton P. Caldwell and Elizabeth F. Caldwell his wife parties of the first part, and Howard M. Carver party of the second part;

Witnesseth, That in consideration of ten Dollars, the parties of the first part do grant unto the party of the second part, in fee simple, all the right, title, interest and estate of the parties of the first part or either of them in or to all of original lot numbered fourteen (14) in Square numbered eight hundred and eighty-two (882) in the City of Washington, District of Columbia together with the improvements, rights, privileges and appurtenances to the same belonging.

And the said parties of the first part covenant that they will warrant specially the property hereby conveyed.

Witness our hands and seals the day and year hereinbefore written.

MILTON P. CALDWELL. [SEAL.]
ELIZABETH F. CALDWELL. [SEAL.]

In presence of —

EMORY H. BOGLEY.

DISTRICT OF COLUMBIA, *To wit* :

I, Emory H. Bogley, a Notary Public in and for the District of Columbia, do hereby certify that Milton P. Caldwell and Elizabeth F. Caldwell his wife parties to a certain Deed bearing date 157 on the Third day of February 1905, and hereto annexed, personally appeared before me in said District, the said Milton P. Caldwell and Elizabeth F. Caldwell, his wife being personally well known to me as the persons who executed the said Deed, and acknowledged the same to be their act and deed.

Given under my hand and seal this 3rd day of February 1905.

EMORY H. BOGLEY, [SEAL.]

[NOTARIAL SEAL.]

Notary Public.

[Endorsed:] Received for record on the 4 day of Feby. A. D. 1905 at 10.00 o'clock A. M., and recorded in Liber No. 2887 at folio 313 *et seq.* one of the Land Records for the District of Columbia, and examined by Jno. C. Dancy, Recorder.

158 EXHIBIT REBUTTAL No. 1.

Office of the Assessor, D. C.

NOTICE.—This bill is for the tax year from July 1, 1903, ending June 30, 1904.

Pay to the Collector of Taxes, D. C.

All of tax payable in May, 1904. One per cent. penalty on the first day of June, 1904, and a like penalty on the first of each succeeding month. One-half, however, may be paid in November, 1903, at option of owner.

1904 Taxes Year Ending June 30. 1904

Tax \$1.50 per \$100 Assessed Value.

Washington City.

Howard M. Carver

Folio 63.

Transferred to.....

To the District of Columbia, Dr.

Square.	Lot.	Value of lot.	Value of improvements.	Total assessed value.	
882	S. 32	\$278	\$700	\$978	
			Duplicate		Tax 14.67

[On the margin:] For further description of property see records and plats.

10—1645A

To all of tax.....	\$14.67
To penalty of.....per cent.....	\$.....
Advertising.....	\$.....
Total.....	\$.....

113/153

[SEAL.]

E. G. DAVIS,
Collector, D. C.
By C. W. C.

Received payment—5/23/'04.

159

Certificate of Assessment.

Office of the Assessor, District of Columbia,

WASHINGTON, June 10th, 1904.

This is to certify that Real Estate to the amount of Nine Hundred & Seventy Eight Dollars is assessed on the books of this office in the name of Howard M. Carver Square 882, sub lot 32.

\$978.

City.

[SEAL.]

F. H. ALVEY,
Assistant Assessor, D. C.

160

Decree.

Filed November 14, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 24742, Doc. 55.

LOUIS L. WATSON, Plaintiff,

vs.

HOWARD M. CARVER, Defendant.

This cause coming on to be heard upon the bill, answer, replication and testimony, after argument by counsel for the respective parties, it is by the court this 14th day of November ordered adjudged and decreed that the bill of complaint filed herein be and the same is hereby dismissed, and that the defendant recover of the plaintiff all proper costs herein.

The plaintiff having prayed an appeal in open court the same was duly allowed, and the amount of the appeal bond fixed at one hundred (100) dollars.

WENDELL P. STAFFORD, *Justice.**Memorandum.*

December 5, 1905.—Appeal bond filed.

161

Directions to Clerk for Preparation of Record.

Filed January 12, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 24,742, Docket No. 55.

LEWIS L. WATSON

vs.

HOWARD M. CARVER.

The clerk will please prepare a transcript of the record in the above entitled cause for use upon appeal taken by Lewis L. Watson to the Court of Appeals of the District of Columbia.

And the said Lewis L. Watson appellant, hereby designates the following for use in said appeal.

The Bill together with eight Exhibits thereto attached.

The Answer of the Defendant.

Stipulation and agreement of Counsel.

All of Complainant's testimony, together with Exhibits.

All of Defendant's testimony together with Exhibits.

All the Docket entries in this cause.

The decree and appeal.

Memorandum of filing bond.

JOSEPH H. STEWART,

Solicitor for Complainant.

162

Order Extending Time to File Transcript of the Record.

Filed January 19, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 24,742.

LEWIS L. WATSON

vs.

HOWARD M. CARVER.

Upon motion of the Complainant it is this 19th day of January A. D. 1906 by the Court ordered that the time for filing the transcript of record in the appeal taken herein, be extended until the 15th day of February A. D. 1906.

THOS. H. ANDERSON, *Justice.*

163 No. 24,742. Supreme Court of the District of Columbia.

Parties.	Action.	Complainant's Solicitor.	Costs.		
Watson, Lewis L. vs. Carver, Howard M.	Injc.	Jos. H. Stewart. Defendant's Solicitor. Arthur Peter.	Clerk... .. Marshal... .. Examiner... .. Depositions ()... Auditor... .. Printer... .. Witnesses... .. Solicitor... ..		

Date.	Proceedings.	Deposits.	Clerk's Fees.	
1904.				Total.
June 21	Deposit toward costs by J. H. Stewart.....	\$10.00		
" "	Bill—appearance—order to file.. ..		55	
" "	Spa. to Ans. and copy issued.....		2 00	
" 24	" " " Retd. Served Def't.....		25	
" 29	Appearance of Arthur Peter for Def't. O. B. 20, p. —.		40	
Aug. 2	Demurrer filed.....		25	3 20
" 3	Calendared for Sept. 1904 Term O. B. 20, p. 143.		40	
1905.				65
Jan'y 17	Demurrer overruled—M. 72, p. 307.....		40	
Feb'y 4	Answer of Def't filed.....		25	
" 7	Replication—filed.. ..		25	
" 28	Proof—Limit of Time for taking—Mo. for file..		25	
Mar. 24	" " " " M. 72, p. 484.		55	
May 5	Spa ad test of May 4, 1905—Retd. Served (1)..		50	
" 25	Pleadings: Stipulation of counsel &c. to file...		25	
" 25	(6) Depositions behalf of compl't by Exmnr. J. A. Lynham.	\$22.00	25	
" 25	(5) Depositions behalf of def't by Exmnr. J. A. Lynham.	\$25.20	25	
" 25	Exhibits to Depositions—9 for Def'ts and 1 for compl't.		25	
" 31	Calendared for June, 1905 Term O. B. 20, p. 324..		40	3 60
Nov. 14	Bill ordered dismissed with costs against compl't. Appealed—M. 75, p. 49.		40	
Dec. 5	Appeal Bond for \$100 approved—filed.....		25	
1906.				65
Jan. 12	Designation of Record on appeal.....		25	

164 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss :

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 163, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 24,742, in equity, wherein Lewis L. Watson, is complainant and Howard M. Carver, is defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe
Seal Supreme Court my name and affix the seal of said Court, at
of the District of the City of Washington, in said District, this
Columbia. 29th day of January, A. D. 1906.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover. District of Columbia Supreme Court. No.
1645. Lewis L. Watson, appellant, *vs.* Howard M. Carver. Court
of Appeals, District of Columbia. Filed Feb. 12, 1906. Henry W.
Hodges, clerk.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

MARCH TERM, 1906.

No. 1645.

LEWIS L. WATSON, APPELLANT,

vs.

HOWARD M. CARVER, APPELLEE.

BRIEF FOR APPELLEE.

ARTHUR PETER,
Attorney for Appellee.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

MARCH TERM, 1906.

No. 1645.

LEWIS L. WATSON, APPELLANT,

vs.

HOWARD M. CARVER, APPELLEE.

BRIEF FOR APPELLEE.

Statement of Facts.

On the 21st day of June, in the year 1904, the appellant filed his bill in equity, in the Supreme Court of the District of Columbia, against the appellee, alleging that the appellee was obstructing a public alley in the city of Washington, the use of which was essential to the proper enjoyment of the appellant's property, and praying that the appellee might be decreed to remove said obstruction. The defendant answered the bill, specifically denying the equities thereof. A general replication was filed, and evidence taken by the appellant and the appellee in support of their respective contentions. Upon a final hearing the bill was dismissed, from which decree this appeal was taken. The following is a condensed statement of the facts in evidence, about which there is no dispute, together with a reference to the act of Congress

providing for the dedication of alleys in the city of Washington.

By an act of Congress, approved August 27, 1888 (U. S. Stat. at Large, Vol. 25, page 451), the Commissioners of the District of Columbia were, by section 1, authorized and directed to publish such *general orders* as might be necessary to regulate the platting and subdividing of all lands and grounds in the District of Columbia.

By section 2, all spaces on any duly recorded plat of lands thereof designated as streets, avenues, or alleys, shall thereupon become public ways, *provided they are made in conformity with the provisions of section 1.*

By section 41, orders of the Commissioners made pursuant to the act shall have the force and effect of law thirty days subsequent to the day of publication.

May 20, 1895, in pursuance of the power given under aforesaid act, the Commissioners passed the following order: "No public alley in the city of Washington or Georgetown shall be less than ten feet in width" (Defendant's Exhibit No. 3, p. 65).

On May 22, 1897, M. P. Caldwell, being then the owner of original lot No. 14, in square 882, filed a proposed subdivision thereof into three lots, numbered 32, 33, and 34, with a proposed alley *five feet wide* at the rear, 32 being the corner lot. Lot 14 was on the southeast corner of L and Canal (otherwise Sixth) streets. By the subdivision, the lots would front on L street and run back sixty-six feet to said alley. The alley proposed was what is known as a blind alley or a cul-de-sac (see Complainant's Exhibit No. 2, opposite p. 5).

On July 6, 1897, the Commissioners of the District of Columbia ordered that the plat filed by Caldwell to indicate how he intended to subdivide said lot be admitted to record in the office of the surveyor of the District of Columbia, and on July 7, 1897, the said Caldwell subdivided said lots in conformity with his former

proposal, and said plat was admitted to record (Complainant's Exhibit No. 1, opposite p. 4).

On November 6, 1897, the said Caldwell conveyed said lots 32, 33, and 34, together with all the *ways, easements, rights, privileges, appurtenances, and hereditaments* to the same belonging or in anywise appertaining, to a certain Eugene A. Atchison (Complainant's Exhibit No. 3, p. 36).

In the fall of 1897, probably about December 1st, Atchison commenced the erection of three houses, one upon each of said three lots (1st Endorsement Inspector of Buildings, Defendant's Exhibit No. 6, p. 69).

When Atchison commenced to dig the foundation for the houses, the appellee, who was the defendant below, made a deposit upon lot 32. Atchison built a large shed upon the rear of the lot for the appellee's horse and wagon as an inducement for him to buy the same (p. 46).

The appellee's business is that of a produce dealer, who vends his wares on the street with a horse and wagon (p. 47).

When he bought the lot he thought the stable was on the same (p. 48).

He moved into the house on lot 32, a brick two-story house on the corner of L and Canal (otherwise Sixth) streets, in April, 1898 (p. 50).

On the 1st day of April, in the year 1898, the said Atchison conveyed said lot 32, with the *improvements, ways, easements, rights, privileges, and appurtenances* to the same belonging or in anywise pertaining, to the appellee, Howard M. Carver, with a clause of special warranty as to the land, premises, and appurtenances (Complainant's Exhibit No. 8, p. 11). Atchison drew the deed (p. 50).

On July 20, 1899, Atchison wrote a letter to the Commissioners of the District of Columbia, saying that he had built the three houses on said original lot 14, and

that his carpenter through mistake had put the sheds on the five-foot alley; that he had sold one of the houses to a Mr. Carver, and that when he, Atchison, found out the mistake, Carver would not let him move the sheds so that he, Atchison, could have the use of the alley for his other houses. He requested the Commissioners to compel Carver to remove the shed from the alley (Defendant's Exhibit No. 1, p. 62).

On July 27, 1899, a computing engineer for the District of Columbia recommended to the Engineer Commissioner of the District of Columbia that Atchison be advised that the alley is not public; that as it was only five feet wide, he was sure the District did not wish it (ibid).

On July 29, 1899, this recommendation was approved by the Commissioners of the District of Columbia (ibid).

On August 3, 1899, William Tindell, secretary to the Board of Commissioners, notified Atchison, by direction of the Commissioners, that the alley was not a public alley, and that the Commissioners could not effect the relief desired by Atchison (ibid).

On August 7, 1899, Atchison, through his attorney, John Ridout, Esq., renewed his request to the Commissioners of the District of Columbia (Defendant's Exhibit No. 2, p. 63).

On August 9, 1899, the inspector for the District of Columbia reported that the same was not a public alley (ibid).

On September 8, 1899, the matter was referred to the attorney for the District of Columbia (ibid).

November 10, 1900, that attorney returned the same with a request for a full report as to the facts.

On November 24, 1900, said attorney was informed by the clerk that after the subdivision was created in 1896, the then owner, in improving the lots of the subdivision, built over the alley space with woodsheds. Such occupa-

tion continued without question until July, 1899, when the owner, having disposed of one of the properties, applied to have its woodshed removed and the alley opened. No alley ever existed on the ground in fact, and the parties purchasing say that they purchased with the understanding that the woodshed represented the rear limits of the respective lots (Defendant's Exhibit No. 2, p. 64).

On December 17, 1900, Andrew B. Duvall, esq., then attorney for the District of Columbia, wrote a clear and complete letter to the Commissioners advising them that the alley was not a public alley, that it was of no public use, and that the appeal from Mr. Atchison came with very bad grace (Defendant's Exhibit No. 3; p. 65).

On the 8th day of February, 1900, Atchison conveyed said lot 33 to the appellant (Complainant's Exhibit No. 4, p. 8).

Testimony of appellant. Cross-examination:

"Q. Now when you bought your house, Mr. Carver's stable was standing on these five feet of ground that you contend belong to the District of Columbia, wasn't it?

A. Yes, sir.

Q. And you saw it there before you bought the property, didn't you?

A. Why, certainly.

Q. And you saw it there before you purchased the property, didn't you?

A. Why, certainly" (p. 20).

Atchison told the appellant Watson at the time Watson bought the property that the three sheds on the three lots were on the alley. That Carver had owned his for some time. That he, Atchison, was ready to move the sheds, but that Mr. Carver objected to it. Watson accepted Atchison's agreement that he, Atchison, would move the sheds (pp. 21, 22, 25, and 26).

In June, 1901, R. E. Bradley wrote to the Commis-

sioners, telling them that he held a trust note on lots 33 and 34, and requested the removal of the sheds.

On June 18, 1901, the secretary to the Board of Commissioners, by their direction, informed Mr. Bradley that the alley was not a public alley (Defendant's Exhibit No. 4, p. 67).

May 14, 1902, Alexander Muncaster, as attorney for the complainant, requested the Commissioners to compel the defendant to remove the shed, whereupon, on May 19, 1902, a certain Captain H. C. Newcomer, an assistant to the Engineer Commissioner of the District of Columbia, recommended to the Engineer Commissioner that, though the Commissioners had notified the complainant three times that the alley was a private one, yet, as it did not appear clear to him from the opinion of the attorney for the District of Columbia whether the alley was public or private, that he thought it was desirable to have it as a public alley (Defendant's Exhibit No. 5, p. 68).

On May 24, 1901, Watson wrote to the Commissioners asking that the alley be opened. On June 1, 1901, the Commissioners informed Watson that the alley was not a public alley, and that they could not take any action in the matter (Complainant's Exhibit No. 8, p. 71).

On June 11, 1902, the said Newcomer, then acting Engineer Commissioner of the District of Columbia, had the matter referred to the attorney for the District of Columbia for another opinion, notwithstanding the objection of one of the other Commissioners (Defendant's Exhibit No. 5, p. 68).

On April 7, 1903, the Commissioners passed an order purporting to confirm the acceptance of the alley, and ordered all obstructions to be removed (Complainant's Exhibit No. 5, p. 10), and the appellant and the appellee were ordered to remove the alleged obstructions (Complainant's Exhibit No. 6, p. 10).

Between April and December, 1903, the appellee was arrested for an alleged obstruction of the alley, but upon a trial in the Police Court he was acquitted upon the ground that the alley was a private alley (Complainant's Bill, p. 3).

On December 8, 1903, Watson wrote to the Commissioners, saying that he had complied with their order of April 13, 1903, and calling their attention to the fact that Carver, without mentioning his name, had not done so. The Commissioners replied to Watson, telling him that the alley had been decided to be a private alley (Complainant's Exhibit No. 7, p. 10).

Watson knowingly used a shed covering the alleged alley at the rear of his lot from the time of his purchase down to the time the Commissioners directed him to remove it, viz, April, 1903 (pp. 23 and 24).

Watson did not complain until the owner of the lot to the rear of him had built up against his shed (p. 23).

Atchison testified that Mr. Carver's shed covered the same land at the time he, Atchison, endeavored to have the shed removed that it did at the time he had previously sold the same to Carver (p. 28). Atchison also testified that he did not tell Carver that his, Carver's, shed was over the alley until over a year after he had sold the same to him (pp. 28, 29, and 62).

Henry Williams testified that he built the stable and sheds and fence by direction of Mr. Atchison (pp. 43 and 44); that both he and Atchison measured for the sheds (p. 45); that Atchison was there off and on while he was building the shed (p. 45).

On the 3d day of February, in the year 1905, the said Caldwell conveyed all his right, title, and interest to original lot No. 14 to the appellee (p. 72).

ARGUMENT.**FIRST.**

**The Alleged Obstruction is Upon Land to Which
Neither the Appellant Nor the Public Has Any
Title or Any Right of Way.**

By virtue of the act of Congress approved August 27, 1888 (Stat. at Large, vol. 25, p. 451), the Commissioners of the District of Columbia were directed to make general orders regulating the subdividing of lands and the dedication of avenues, streets, or alleys in the District of Columbia. By said act such general orders were to have the force and effect of law. In pursuance of such direction, the Commissioners of the District of Columbia passed a general order that no alley in the city of Washington should be less than 10 feet in width. Such being the law of the District of Columbia, Caldwell, through whom all the parties claim, subdivided original lot No. 14 with a proposed alley five feet wide at the rear.

“To constitute a valid statutory dedication, the provisions of the statute must be substantially, if not literally, complied with.”

A. & E. E. of L., 2d ed., vol. 9, p. 35.

Ordinarily a statute relating to dedication does not prevent a common law dedication, but the law of the District of Columbia, as heretofore set forth, absolutely prohibits the creation of a public alley less than ten feet in width. There can be no question of the right of Congress acting through the Commissioners of the District of Columbia to prevent the creation of a public alley unless of a certain width, and no one could force the title of an alley upon the United States against its wishes. But even if the statutory regulations of the District of Columbia do not exclude a common law dedica-

tion inconsistent with the terms of the statute, in order to create a common law dedication it is essential that there be an intent on the part of the owner to deprive himself of his property, and that he by appropriate acts has given effect to that intention.

The owner of the soil knew that he could not create a public alley five feet in width, and he says that he never intended to part with the title until the adjoining owner should agree to dedicate five feet (Rec., p. 55).

"The intent of the owner must be clearly and positively shown."

A. & E. E. of L., 2d ed., vol. 9, p. 37, 34, and 36. . . .

The facts must positively and unequivocally indicate the intent. There is no presumption of an intent to dedicate (ibid., p. 38). That an alley opens into a street at only one end is a strong circumstance to rebut any presumption of dedication, because such an alley is useless to the public (ibid., latter part of note 2, p. 24).

Since the creation of a public alley imposes burdens upon the public, it is necessary that there shall be an acceptance by the authorities, and this acceptance must be made within a reasonable time (ibid., p. 50). The proposed alley was never open to the public or to private individuals. Nothing was ever done by the public authorities by way of accepting the alley, and the first official action of the District was a notification that the alley was not a public alley. This was an express refusal of any offer to dedicate. A dedication is not complete until there has been an acceptance on the part of the public, and if no private rights have intervened, an offer of dedication may be withdrawn or the incomplete dedication revoked by the dedicator. Where the right to revoke exists, the application of the land to a use inconsistent with the purpose of the alleged dedication constitutes a revocation (ibid., p. 78).

When Atchison built the stable and sheds covering the alleged alley, he was the owner of all three of the lots abutting thereon. The public could not and had not accepted the alleged dedication, and no private rights had intervened. It is probably true that neither Caldwell nor Atchison could have closed the alley after a sale of any of the lots which had been created out of original lot 14, not because the alley would have become a public alley, but because any person to whom any one of said lots had been sold before the alleged dedication had been revoked would have acquired private rights therein. In this case, however, from the inception all the lots had first been in Caldwell and then in Atchison, and before Atchison sold any of the lots and before the public or any private individual had acquired any rights or interests in the alleged alley, Atchison, by unmistakable acts, revoked any dedication by building over the proposed alley and effectually closing the same.

It follows, from the legal propositions and facts herein set forth, that the alleged obstruction was not upon a public alley nor upon a private alley. It was upon land in reference to which the owner may have at one time had an intention to make a private alley, but which intention he changed before any private rights intervened, and visibly notified the public thereof.

Neither the public nor the appellant have any interest in or right of way over the land in question, and there was no error in dismissing the bill.

SECOND.

Atchison Could Never Have Compelled the Defendant to Remove the Stable, Neither Can the Appellant, Who Has No Greater Right Than Atchison.

As an inducement to the appellee to buy his lot, Atchison built a stable upon the rear thereof.

The defendant believed, and had a right to believe, that the stable was wholly upon the land Atchison sold him, and not partly upon an alley reserved by Atchison. If Atchison, by intention or by mistake, placed the stable upon either a public alley or upon property of which he intended to make a private alley, and sold the same to the defendant, Atchison would be estopped to compel the appellee to remove the stable from the same. The appellant, who took title thereafter from Atchison with full knowledge that the appellee's stable covered the land in dispute, and that the appellee claimed the right to continue it there, acquired no greater right to have the same removed than had Atchison. So that whether the land be a public or private alley, whether it be owned by the United States or Atchison, Caldwell, or the appellee, Atchison can not, nor can any one claiming under him, destroy one of the considerations created by Atchison for the purpose of inducing the appellee to buy the lot.

Frizzell *vs.* Murphy, 19 App. D. C., p. 440.

It is respectfully submitted the decree below should be affirmed.

ARTHUR PETER,
Attorney for Appellee.